PRACTICAL GUIDE

TO

CRIMINAL COURT PRACTICE.

Containing.

Practice and Procedure followed in Criminal Courts, Police Investigation, Law of Evidence ordinarily followed in Criminal Cases, Important portions of the Indian Penal Code with copious notes, ten important Acts with notes, Medico-Legal Jurisprudence, Models of 76 English and 60 Bengali Petitions, 10 Affidavits, Disputed hand-writing, Thumb-impressions, Cross-Examination with Models, Process fees, Copying charges etc.

BY

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PREFACE.

Ever since the publication of my 'Civil Court Practice and Procedure', I have had in contemplation a venture on similar lines for practitioners on the Criminal Side, but I could not get it in the round until retirement from service brought me plentier leisure for single-minded application to the undertaking.

I believe I claim nothing extravagant when I say that I know of no other book on the market which follows my plan or professes to achieve what it aims at. It is more than a mere help book for a student in college, much too humble in its scope to rival the well-known editions of any of the three major Acts of daily use in the Criminal Courts, e.g., the Indian Penal Code, the Criminal Procedure Code and the Indian Evidence Act, and yet immensely helpful as a practical guide for one just called to the Bar.

The book begins with giving the reader a broad and generalised summary of the Criminal Procedural Law, with special reference to the important Chapters of the Criminal Procedure Code and case-law bearing on them and calling for frequent reference in every day practice. As police investigation is just an integral part of the Procedural Law, loosely so called, so much of the procedure followed in police investigation as one must know has been incorporated.

The Indian Penal Code has presented more than usual difficulty in the matter of selection of sections.

frequency of the crimes has been my guide in this regard; and if I have been less scrupulous in my choice of some sections, I would frankly put it down to a certain partiality which practical experience often suggests to everyone undertaking a beginner's *Vade-mecum*. The labyrinths of law may well be left for the veterans to explore; youth may be well content with avoidance of pitfalls and acquaintance with important thoroughfares which millions use daily. The Indian Evidence Act has been touched in passing. Those portions of the Act which present problems to young practitioners have been specially selected for treatment at some length. The rulings chosen are nearly always the leading cases, and are mostly of a representative nature. These aside, ten minor Acts of daily use in Criminal Courts, e.g., the Contempt of Courts Act, the Whipping Act, the Motor Vehicles Act, the Explosives Act, the Cattle Trespass Act, the Indian Arms Act, the Prevention of Cruelty to Animals Act, the Public Gambling Act, the Opium Act and the Reformatory Schools Act, with useful notes and suggestions, have been included in the book to enhance its utility as a handbook of Criminal Court practitioners.

Cross-examination is to the lawyer what laboratory work is to the student of science. One must not only know what it means in theory but observe very carefully, and experiment still more cautiously, to achieve success, or at any rate to avoid disaster. The Chapters on Cross-examination, as they are given, are by no means exhaustive; they only indicate the lines and

more appropriately, show which way danger
Expert evidence is daily getting currency with the advance and specialisation of science. As medical evidence and evidence of experts in hand-writing and thumb-impression come up before Courts administering criminal law very frequently, a few pages devoted to these topics, it is hoped, may prove of some use to those for whom this book is primarily meant.

Drafting of petitions is yet another difficulty to the neophyte. I have made every attempt to make light of the difficulty by incorporation of a large number of forms in English (and in Bengali also in the Bengali Appendix) discussing the law in cases of more important applications.

To sum up in a few words, I have made every attempt to make the book useful and helpful to young practitioners ; and, I shall deem my labour more than amply rewarded if it helps to inspire confidence in young practitioners to take up independent conduct of cases.

A lawyer, if he aims at any measure of success in important criminal cases, must have a passable acquaintance with the broad principles of the Medico-Legal Jurisprudence. My thanks are due to Dr. P. K. Banerjee, M. B. and Dr. P. K. Chatterjee, M.B. (Medalist) for their contribution of the Chapters on the Medico-Legal Jurisprudence which, I am sure, will be found interesting and useful. The Index is the achievement of Mr. Kamjit Mukherjee, M.A., B.I Advocate, High Court, Calcutta, who has very kin

much pains to help me. My son, Mr. K. N. ..ly, M. A., B. L., Advocate, helped me from ..e to time in the compilation of this book.

In conclusion, I cannot but thank my esteemed Publishers for fixing a modest price for this publication inspite of the fact that costs of printing and paper have gone up high.

Calcutta.
November, 1937.

AUTHOR.

A LIST OF
ABBREVIATIONS USED IN THE BOOK

A.	...	Indian Law Reports, Allahabad Series.
A. I. R.	...	All India Reporter.
A. L. J.	...	Allahabad Law Journal.
A. W. N.	...	Allahabad Weekly Notes.
All.	...	Indian Law Reports, Allahabad Series.
B. L. R.	...	Bengal Law Reports.
Bom. H. C. R.	...	Bombay High Court Reports.
Bom. L. R.	...	Bombay Law Reporter.
Bur. L. J.	...	Burmah Law Journal.
C. L. J.	...	Calcutta Law Journal.
C. L. R.	...	Calcutta Law Reports.
C. W. N.	...	Calcutta Weekly Notes.
Cal.	...	Indian Law Reports, Calcutta Series.
Cr. L. J.	...	Criminal Law Journal of India.
I. C.	...	Indian Cases.
Ind. Jur.	...	Indian Jurist.
I. R.	...	Indian Reporter.
Lah.	...	Indian law Reports, Lahore Series
L. W.	...	Law Weekly, Madras.
L. B. R.	...	Lower Burmah Rulings.
M. L. J.	...	Madras Law Journal.
M. L. T.	...	Madras Law Times.
M. W. N.	...	Madras Weekly Notes.
Mad.	...	Indian Law Reports, Madras Series.
Nag.	...	Indian Law Reports, Nagpur Series.
N. L. R.	...	Nagpur Law Reports.
N. W. P. H. C.	...	North West Provinces High Court Reports.
O. C.	...	Oudh Cases.
O. W. N.	...	Oudh Weekly Notes.
Pat.	...	Indian Law Reports, Patna Series.
P. L. R.	...	Patna Law Reporter.
P. L. T.	...	Patna Law Times.

	...	Punjab Reporter.
P. R. B.	...	Police Regulations Bengal.
Rang.	...	Indian Law Reports, Rangoon Series.
Sind.	...	Indian Law Reports, Sind Series.
S. L. R.	...	Sind Law Reporter.
U. B. R.	...	Upper Burma Rulings.
Weir.	...	Weir's Criminal Rulings.
W. R.	...	Sutherland's Weekly Reporter. (Criminal)
W. R. (Civil).	...	Sutherland's Weekly Reporter, Civil Cases.
W. R. Cr. Cir.	..	Sutherland's Weekly Reporter, Criminal Circulars.
W. R. F. B.	...	Sutherland's Weekly Reporter Full Bench Cases.

Other Abbreviations.

Cr.	...	Criminal.
Cr. P. C.	...	Criminal Procedure Code.
Cr. R.	...	Criminal Rulings.
F. B.	...	Full Bench.
I. P. C.	...	Indian Penal Code.
P. C.	...	Privy Council.
S. B.	...	Special Bench.
Sec.	...	Section.
U./S.	...	Under Section.

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PRACTICAL GUIDE

TO

CRIMINAL COURT PRACTICE.

INTRODUCTION.

A General Outline of Criminal Work.

The Crown takes upon itself the task of maintaining peace and order in the country by punishing actual offenders and enforcing good behaviour on people who are considered to be a menace to public safety and tranquillity, or who have, or are reputed to have, developed criminal propensity. The criminal law of the land, therefore, splits itself up into two broad divisions, one for trial and punishment of criminals, and the other for prevention of crimes.

Crimes, as is well known, are of various types and complexion. Law leaves it to individual choice to complain against the accused in certain cases of minor offences against person and property called *non-cognizable* for this purpose, and prescribes prosecution, in the name of the Sovereign, for every criminal whose crimes are of higher magnitude and are called "cognizable" for obvious reasons.

For purposes of trial, crimes are divided into various groups. Some cases are triable exclusively by the Court of Sessions, or the High Court, others again only by Magistrates of First Class, and the rest by any Tribunal vested with the powers of a Magistrate of Second and Third Class. (*For ordinary and extraordinary powers of Courts see Part I, Chap. V*).

Prevention of Offences.—Besides trial of actual offenders, Magistrates have another function. They are the custodians of public peace and tranquillity. It often happens that in a certain locality there are persons who by their general conduct and past behaviour threaten to jeopardise the safety of the people. Law provides that this class of men should be made to realize their mistakes and shortcomings, and be on probation of guaranteed good behaviour. Chapter VIII of the Criminal Procedure Code deals at length with cases of this description.

Preventive proceedings may originate on private complaint, police reports or information obtained from any reliable source by the Magistrate. In cases where parties come to the Magistrate direct with their grievance or apprehension, the facts of the case are generally set-out in brief in a petition. The Magistrate may examine the party at his pleasure, or may not, if he thinks fit to do so. Except in very emergent cases, the petition is sent on to the Police-officer, in whose jurisdiction the opposite party lives, for enquiry and report which is then put up before the Magistrate.

If the his carring Police-officer supports the complainants notice is issued on the opposite party to show cause why proceedings should not terminate against him. After this, both parties appear and adduce evidence. The procedure adopted is the same as in Summons cases except for the fact that the opposite party is not deemed an accused. The next stage is the argument of lawyers on either side followed by a judgment.

Order in a preventive proceeding may be (1) security for good behaviour, (2) taking certain order with certain things, (3) attachment of the property in dispute till decision by a Civil Court of competent jurisdiction and (4) enjoining a party who unlawfully dispossessed another to abstain from disturbing the possession of the person who is put in possession by the Magistrate.

(*For a fuller treatment of Security Proceedings see Part II, Chap. I*).

Police Investigation.—When a serious offence is reported at the *Thana* the police takes up investigation. The investigating Police officer may arrest, suspected persons, release them on bail, search their houses with a view to find out incriminating articles, and finally arrange for holding identification parade to ascertain if any suspected person can be properly identified by the complainant or his people. It is the duty of every Police officer investigating a case to render first aid to injured persons, send them to hospital for treatment, arrange in a fit case for recording dying declaration of material witnesses (to be used as,

evidence at the trial). He should also collect available materials connected with the crime a. injury to the victim e. g. blood marks, semen etc and send these to the Chemical Examiner for report (such reports also are used as evidence at the trial). The police can also hold a search in terms of a Search Warrant issued by a Court.

If the police be satisfied on the evidence about the commission of an offence, a Charge-sheet is submitted to the Magistrate and the suspected person or persons are produced in Court. (*For details see Part I Chap. VII*).

Enquiry and Trial.—The Magistrate acting on the police report takes cognizance of the case. If the Crown makes out a *prima facie* case, charges are drawn up against the accused. These charges may be amended or altered afterwards. (*See Part II-A., Chap. I*).

In a Warrant case, where the crime is serious but not very serious the Magistrate proceeds with the trial of the accused. In graver cases, an inquiry is held by the Magistrate and the accused person or persons are committed to the Court of Session for taking his or their trial. The Sessions Judge tries the accused with the aid of a jury or body of assessors, as the case may be, and passes sentence according to law. (*For full details as to procedure followed in Warrant Cases see Part II, Chap. VI,* for Enquiry before Commitment see Part II, Chap. VII, and Sessions Trial see *Part II, Chap. VIII*).

The Function of a Lawyer.—The right of a party to

place his case before a tribunal is probably coeval with his right to requisition the services of a lawyer for that purpose. As a matter of practice, it is more often than not that one finds a party representing his case by a lawyer. The reason for this preference is not far to seek. A trained mind receives from the suitor all information affecting his grievance or right and is in a position to advise as to the course of action to be adopted. This often saves unnecessary litigation which means waste of private money and public time. The rôle which a lawyer thus has to play in the administration of justice is by no means insignificant: he disuades hasty and haughty parties from embarking upon a flimsy litigation, tells every honest man the nature, extent and possibilities of success of his claim, and helps a busy judge to have a grip of the facts of the case and the law bearing on them much quicker and more firmly. The ideal of the profession would thus call for a very high standard of honesty of purpose and intellectual equipment.

Petitions : how to be drawn ?—The first thing that a lawyer has to do after he has had instructions is to be sure that his client has a *prima facie* good case. He has next to set out the case in clear and unambiguous language bringing out the point or points which he considers essential for establishing a case under any particular section or sections of the Indian Penal Code or any other law. The draft should then be read out to the client and explained carefully so that an untrained mind may not be surprised at the appear-

ance of his case as it stands, shorn of the vast mass of useless verbiage. When this is done, it is usual for the lawyer to ask the complainant to sign the petition.

Filing and hearing of the petition of complaint.— In Sub-divisional Courts, it is generally the Sub-divisional Magistrate who receives petitions of complaint as the first thing in the day's work. When the petition is put up before the Magistrate, empowered to take cognizance of the case, the complainant is called and examined on oath by his lawyer much in the same way as witnesses are examined-in-chief. The Magistrate records the complainant's statement and orders issue of process on the accused, unless he is of opinion that the complainant's story is untrue or has some inherent improbability about it. If the Magistrate refuses to issue process, he either dismisses the case under section 203 Cr. P. C., or directs an enquiry by the police or by some respectable gentleman of the locality. In a case where enquiry is directed, the Magistrate has to wait for the report of the enquiry for disposal of the petition. It very seldom happens that a favourable report delays, or denies a party, the issue of process.

Dismissal of a complaint under section 203 Cr. P. C.— The aggrieved party is surely not without any relief in such a case. An application to the Sessions Judge or the District Magistrate under Section 436 Cr. P. C. may, in a fit case, bring about an order for further enquiry either by the same Magistrate or by another. (*See Part II-B, Chap. II*).

Remedy in cases where adverse enquiry report is

submitted.—The complainant's lawyer, if he has reason to believe that the report is not fair or impartial, may impeach the same by a petition and demand a fresh enquiry.

Appearance of the accused.—When on complaint of a party the Magistrate issues process, the lawyer should direct his client to file requisites e. g. process fee and address of the accused. Careless supply of address of the accused or delay in filing the prescribed fee for issue of process often means unnecessary delay, disappointment and expense to the complainant. Ordinarily, the accused on receipt of the summons or warrant appears in Court on the date fixed for such appearance : but there are cases where the accused tries to evade the process of the Court and moves about from place to place. The procedure which the Court adopts in these extrême cases has been discussed later.

On the date fixed for the case, the accused appears before the Court, and he is asked if he intends to put up a defence. It is very rarely that an accused person pleads guilty at this stage of the case.

Bail.—In bailable cases, as soon as the accused signifies his assent to take a trial, the Court grants him bail and fixes a date on which the trial proper is to begin. Where the offence with which the accused is charged is non-bailable, applications are put in by the accused stating therein the grounds on which he seeks to be admitted to bail. If the Court on a consideration of the petition is of opinion that the accused deserves

to be on bail during the trial, an order is passed to that effect fixing the amount of security and number of sureties to be furnished. The accused then secures a surety or sureties who along with him execute a bond. This bond is put up before the Magistrate for acceptance. (*See Part II-A, Chap. II*).

Commencement of record of evidence and trial.—A Magistrate can try a case in one of these three ways—(a) As a Summons case (*See Part II, Chap. IV*), (b) a Warrant case (*Part II, Chap. VI*) and (c) Summarily (*Part II, Chap. V*). (*As to which offence is triable as a Summons case, which as a Warrant case and which Summarily see Part III, Chap. II*). Procedure to be adopted for trial of these three types of cases has been discussed in full length later, in the Parts dealing with procedure. Summary trial and a summons-case require the complainant to appear in Court with his witnesses on the date fixed for that purpose. The accused also has to bring his witnesses on that day unless he is spared the necessity of so bringing his witnesses by the Court having regard for the nature of his file on that date and the number of witnesses proposed to be examined by the complainant. The Court opens the trial by asking the accused if he is guilty or not. If the answer is in the negative, the Court asks the complainant to put his witnesses in the box for examination. In summons and summary cases, the Magistrate need not record the evidence *in extenso*: he may simply make a memorandum of important and salient points. The defence lawyer must keep ready for cross-

examination and take up the witness as soon as the complainant has finished his examination-in-chief. When the complainant has exhausted the list of his witnesses, the defence puts in evidence if so desired.

Examination of the accused and charge.—In summons cases and summary trials, the Magistrate need not frame any charge. He has to examine the accused (*See Part II, Chap. XVI*). This is the view of almost all the High Courts except that of Madras.[1]

The order of examination and cross-examination of witnesses in a warrant case.—In Warrant cases, prosecution goes on examining witnesses till the list is exhausted or till the Magistrate considers that sufficient evidence has been led to enable him to frame a charge against the accused. The defence lawyer has the right to cross-examine the prosecution witness twice, once before charge and again after it. The accused in a warrant case may get an adjournment for cross-examination of witnesses examined by the prosecution up to the point of framing of the charge. If the lawyer gets sufficient materials from the cross-examination of the prosecution witnesses, it is hardly necessary or advisable to adduce any evidence in defence. (Note that to adduce evidence in defence means loss of the right of reply to prosecution argument). The lawyer, before he advises his client to adduce evidence in defence must be sure that such evidence is absolutely necessary. It should be remembered that as a matter of practice and prudence, the

1. See *Emp.* v. *Fernandez* 45 Bom. 672 ; *Gilkhri* v. *Emp.*. 49 Cal. 1075. (*Contra*) *Ponnu Samy* v. *Rama-Samy* 46 Mad. 758 (F. B.)

defence should never examine witnesses unless the nature of the prosecution evidence absolutely makes it obligatory). (*For details about trial of Warrant cases see Part II, Chap. VI*).

Disputes regarding immovable Property.—In case of a dispute regarding immovable property likely to cause a breach of the peace, the police can inquire and submit report to the Magistrate. Any private person may as well supply the information. The Magistrate orders the party in possession to remain in possession until legally evicted. He can also attach the property and appoint a Receiver for management of the property so long as the question of title to the property is not decided by a Civil Court. (*Read Part I, Chap. VII*).

Witnesses.—The Magistrates issue summons for production of witnesses cited by the Crown or a private party. In a summons-case (and not in a warrant-case) the complainant is required to pay the necessary expenses e.g. *Talabana* and diet money etc. An accused who is committed to the Court of Session, may submit a list of witnesses to the Magistrate. These witnesses are summoned at Government expenses and directed to appear at the trial in the Sessions Court. (*See Part II, Chap. VII*).

Place of trial.—The Legislature has made provisions for fixing the place for trial of offences. Every offence shall ordinarily be enquired into and tried by a Court within the local limits of whose jurisdiction it was committed. (*See Part II, Chap. III*).

Tendering of pardon.—The Court can tender

pardon to an accomplice, and examine him as a witness for the prosecution.

Evidence.—Evidence is taken in the presence of the accused either in the Court language or in English. (*See Part V*).

Examination of accused.—The Court examines the accused with a view to ascertain what the accused has to say regarding evidence adduced against him, and to explain any matter, if he thinks fit to do so. (*See Part II, Chap. XVI*).

First offenders and old offenders.—First offenders in certain classes of cases, may be discharged by the Court on taking security and requiring them to appear and take sentence whenever called upon. Old offenders get more severe punishment on proof of previous convictions. (*See Part II, Chap. XVI*).

European British subjects etc.—Special provisions have been made in the Code of Criminal Procedure for the trial of European British subjects and others. (*See Part II, Chap. XIV*).

Lunatics.—When the accused is found to be a lunatic and unable to understand the proceedings in Court the trial remains suspended. (*See Part II, Chap. XV*).

Maintenance proceedings.—A wife can, under certain circumstances, get allowance for her maintenance from the husband, by petitioning the Magistrate for the purpose. Minor children, legitimate or otherwise, may ask for maintenance from their father. (*See Part II, Chap. XII*).

Proceedings in case of offences affecting the admi-

nistration of justice.—Special provisions have been made for trial of such offences in Chapter XXXV Cr. P. C. (*See Part II, Chap. XI*).

Commission for examination of witnesses.—Some Magistrates have powers to issue commissions for examination of witnesses as provided in Ch. XL Cr. P. C. (*See Part V, Chap. X*).

Transfer of cases.—A District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate and the High Court can transfer cases from one Court to another as provided in the Cr. P. C. (*See Part II-A, Chap. V*).

Bonds.—Accused persons and persons against whom security proceedings are started, are under certain circumstances, required by Courts to execute bonds. When an accused person is released on bail, he and his surety are required to execute a bond for appearance of the accused in Court on a specific date. Such a bond can be forfeited by the Magistrate on failure of the accused to appear on the fixed date and penalty may be realised from the surety in terms of the bond. On sufficient reason being shown, the Court can remit or reduce the amount of penalty imposed. (*See Part II-A, Chap. II*).

Disposal of property.—The Court can pass orders for restoration of stolen property to the complainant after conviction of the accused.

Abducted females.—The Court can order restoration of abducted females to their husbands or guardians. (*See Part I, Chap. XI*).

Compensation.—The Court may in some cases

direct that a reasonable sum, according to law, be paid out of the fine imposed on the accused to the complainant as compensation. An accused may be awarded compensation by the Court in cases of frivolous accusations[1].

N. B. **All these subjects have been fully dealt with later on in Parts I to II B.**

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1. Sections 545 and 250 Cr. P. C.

PART I.

PRACTICE AND PROCEDURE.

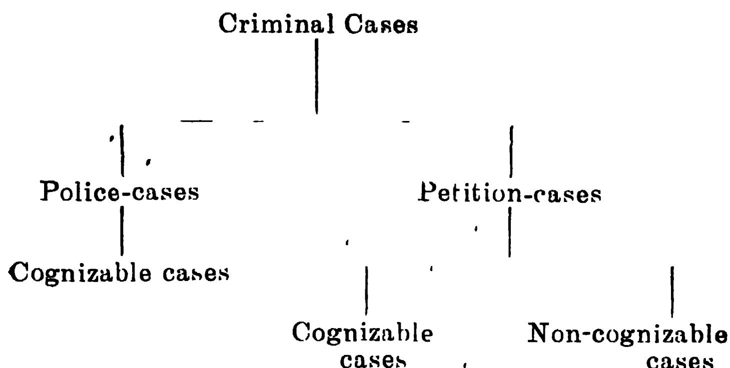
PART I

CHAPTER I

CRIMINAL CASES AND THEIR PREPARATION GENERALLY.

Classification of Cases.—Criminal cases fall into two practical divisions for purposes of classification: (1) Police-cases and (2) Petition-cases. This classification is suggested by the genesis of its initiation. The terminology chosen is not in any sense based upon any special division adopted in the Criminal Procedure Code: it is an accepted classification in practice as distinguished from the more familiar divisions adopted in the Code, e. g. 'cognizable' and 'non-cognizable' cases. True that the expression "Petition-case" or "Police-case" does not find any place in the Cr. P. C.: it is equally true that in the Code no such division is recognized. But the practical utility of this terminology is helpful for a practising lawyer to whom this division will appear more logical than arbitrary.

We call a case 'cognizable' when cognizance of the offence is taken up by the police. This is according to the definition as we find it in the Code. But it is quite frequent that cases which are cognizable are brought straight before a Magistrate by the aggrieved party by a petition. In this way, cases which would come under the category of cognizable offences may well shape into a petition case.



The above table would show that a Magistrate's file can have only two classifications, namely, cases where parties directly approach the Court and those where they approach through the police.

In every case there must be at least one accused person and a complainant. The complainant, however, may be a private individual seeking relief against the offender, or the Crown seeking to bring the offender to book for perpetration of a criminal act upon its subject. In the nature of things, therefore, a lawyer's function may be either of a prosecutor or of a defender. In this country, we have appointed by the Crown, a person whom we call Public Prosecutor. The study of a case, therefore, may be taken up either from the view point of prosecution or from that of defence. The prosecution lawyer has to establish the crime against the offender : his duty is, therefore, to see that evidence is led to establish the essential ingredients of the Section

under which the accused is charged. By parity of reasons, therefore, his adversary, the defence lawyer must see how best he can manipulate the case to bring out of the evidence, points which may either disprove the allegations against his client or at any rate, make them doubtful. In order to achieve either of these ends, a careful study of available materials is about the only point of agreement between the conflicting functions of lawyers opposing each other in a trial. After this they must have a parting of the way, one in quest of materials to build and the other in search for implements to shake or break the structure in the process of construction.

Study of the Case—In criminal cases, oral evidence plays a much more important part than, in civil ones. The reason, however, is obvious. The parties to a civil engagement instinctively endeavour to give a transaction as wide a publicity as is consistent with the privity of the contract or privacy of individual interest. In cases of crimes, the position is otherwise,—it being a natural instinct of every criminal, excepting those who rank among the desperados mad with the passion with which they are seized for the moment, to give his act as impregnable a cloak of secrecy as the nature of the crime, its time and place, and the resources of the criminal's genius may possibly afford. In a good majority of cases, therefore, *circumstances* afford the only materials to connect the criminal with the crime. Roughly speaking there is a much vaster field for circumstantial evidence in criminal cases than in civil litigations. The first thing which a

lawyer should see carefully, and weigh still more dexterously, is the quantity of evidence likely to be available and its quality ; in other words, how much evidence is available, and what portion of it is direct or circumstantial. A fair measure of the evidence in a case may be had from a dive into the first information or the petition which marks the initiation of the proceeding. It is a general principle well recognized in British Jurisprudence, as much it is a rule of prudence, that one must be *first* a witness and then a *good* witness. The significance of this maxim is that it must appear at the earliest opportunity, preferably at the first blush of the case, that the complaining party had any idea of including the witness in the category of people who saw, knew or came to know, any thing relevant to the enquiry. If the F. I. R. or the petition of complaint is suggestive of nothing which would make a person witness to an occurrence, chances are that he is a handy man introduced later as a result of after-thought, nearly always to fill up some gap in the prosecution story or to embroider it. To begin with, therefore, every lawyer should ask himself time and again, who are the witnesses? What are the circumstances? What do they prove, and how? Hence the ~~first~~ rule is : "Read the F. I. R. or the petition of complaint carefully without omitting a single word."

The next important thing which should engage the lawyer's attention is the occurrence. Where did the occurrence take place and when? The F. I. R. would at once furnish a reply to these questions.

The time that has elapsed between the occurrence and the record of the F. I. R. is important. If the delay is unusual, or cannot be explained satisfactorily, it should afford good room for reflection.

Informant.—The role the informant played is of vital importance. If he is a man who was present at the occurrence and pretends to have seen the occurrence or any part of it, every care should be taken to ascertain how much of the information he speaks from direct knowledge and how much of it is really hearsay. (*See Admissibility of the F. I. R. in Part V, devoted to Evidence*).

Omission in F. I. R.—A very common experience in a criminal trial is that the informant states at the hearing, facts about which the F. I. R. is silent. A defence lawyer instinctively feels tempted to make a capital of this inconsistency and the almost invariable answer of a witness when called upon to explain the non-mention of the fact in the F. I. R., introduced for the first time at the trial is either "I was not asked on that point" or that "I said this but the Police-officer did not record." In a comparatively few cases, there is an obvious confusion. If the defence lawyer is of opinion that the witness has embroidered the case, he should, before he begins the cross-examination, read out to the witness, the entire F. I. R. slowly and carefully and ask him if *all that* he said was recorded. The advantage of this position is obvious : the witness is pinned down to his statement and the natural hesitancy that nearly always attaches to intentional prevarication, marks

the demeanour of the witness. If he is a literate witness who could have read the statement before signing that, there is an additional strength gained even if the witness takes shelter under the stock answers quoted at the commencement of this paragraph. (*See Part VII on Cross-Examination*).

Record of the Case and the Police Diary.—The police diary, if available, merits a very careful perusal. In fact, a lawyer may *never* be sure that he has studied the case very well nor probably have any occasion to regret labour bestowed on the study of the record. Strange, and even unexpected, revelations affecting the merits of the case may be had from a careful study of papers apparently formal and useless. No paper in a criminal case is unworthy of a perusal or too trifling to be safely brushed aside.

Instructions in a Criminal Case.—It is seldom the fate of a lawyer in this country or anywhere else to have a client who knows all about his case. A very remarkable thing is that in a large majority of cases, the clientspins out a long story and gets ultimately into boredom. This happy-go-lucky way of narrating the story is partly due to the want of education in the client and principally due to his inability to distinguish the essential from the inessential.—If an accused person cannot instruct his lawyer, it is quite conceivable that he knows next to nothing about the case and probably had as little to do with the crime as his lawyer. The general rule in this regard is to be gentle and affable towards the client and his witnesses and to give them a patient

hearing. If it appears that the witness or the accused is suppressing any fact or is unable to get at the right thing, one or two questions pertinently asked may lead to startling disclosures. A stand-offish attitude on the part of the lawyer or impatience in him to hear out the whole case as narrated by the client in his own way, may give the lawyer occasion for regret when it is too late to mend.

CHAPTER II.

THE CRIMINAL PROCEDURE CODE—ITS APPLICATION AND INTERPRETATION.

The Criminal Procedure Code—Its Application and Interpretation.—The object of the Criminal Law and the Law of Evidence is to protect the innocent and to punish the guilty. The Code of Criminal Procedure provides a machinery for making the administration of justice pure and for avoidance of possible chances of error. The Code is a general Act and yields to the special provisions of Local Law. It is the duty of the Court to observe strictly the provisions of the Code, even though some of its provisions may look like unreasonable. The application of the Criminal Procedure Code is not limited to cases of offence under the Penal Code; it extends to other proceedings of a

criminal or quasi-criminal nature[1], e. g., proceedings, under Sections 107 to 110, 133 to 145, 195 and 476, and 488 Cr. P. C.

Proceedings under Sections 107 to 110 involve restriction of liberty and are quasi-criminal in nature. Sections 133 and 145 of the Code contemplate cases which are more civil than criminal in character[2]. Sanction proceedings under Sections 195 and 476, when conducted in the Criminal Courts, are criminal cases in every sense[3]. Bastardy matters under Section 488 of the Cr. P. Code furnish yet another group of anomalous cases of semi-civil complexion[4].

The rules of interpretation of statutes drawn mainly from English decisions and text books have been applied in various cases. In interpreting the Code effect must be given to every word in a section and to every part of a statute avoiding inconsistency in its different parts. No Court has right to make law. Its function is to expound the law as it is[5]. Marginal notes are no part of the enactment and can not be referred to in its construction[6]. Illustrations to

1. *Hirananda* v. *Emp.* 9 C. W. N. 983. See notes in Parts II.
2. *Hirananda* v. *Emp.*, 9 C. W. N. 983.
Re : *Pandurang Govind* 25 Bom. 179 ; *Lalit Mohan* v. *Suraj* 28 Cal. 709.
3. *Emp.* v. *Gopal Barik*, 34 Cal. 42.
4. *Nurmahomad* v. *Bismollah*, 16 Cal. 781.
5. *Satish Chandra* v. *Ram.* 48 Cal 388.
6. *Bahadur Mollah* v. *Ismail*, 52 Cal. 463 at pp. 466.
Padamsi v. *Collector*, 46 Bom. 366.
Punardeo v. *Ramsarup*, 25 Cal. 858 at pp. 860.

the sections are of value in the construction of the section. But they can not control the meaning of the section[1].

Binding Effect of Judicial Decisions.—The Judicial Committee of the Privy Council being the highest Court according to our constitution, the principles of law laid down by it cannot be questioned by any Court in British India[2]. Decisions of a Full Bench of a High Court is binding on the Division Bench of that Court and on all Courts subordinate to it. In the case of *Kishun Prashad* v. *Tipan*,[3] their lordships Mookherji and Holmwood, J.J. held that every decision of a Full Bench shall be treated as binding on all Division Courts, and Judges, sitting singly, upon any point of law, or usage having the force of law determined by the Full Bench unless it is subsequently reversed by a Bench specially constituted or unless a contrary rule be laid down by the Judicial Committee of the Privy Council. The decision of one High Court is not binding on another, though entitled to great respect[4]. The Sub-Courts are bound to follow the interpretation of law laid down by their High Courts[5]. Where there is no ruling of its own High Court, a Sub-Court is to follow

1. *Satyapria* v. *Govinda*, 14 C. W. N. 414.
2. *Mataprasad* v. *Nageswar*, 30 C. W. N. 626.
3. 34 Cal. 735.
4. *Balvant Ramchandra* v. *Secretary of State*, 29 Bom. 480.
5. *Rahamat* v. *Abdul*, 34 Cal. 672, *Q. Emp* v. *Karigowda*, 19 Bom. 51.

the decisions of another High Court. An unreported judgment is as good an authority as a reported case[1]. An eminent Judge observed : "a judgment is none the less an authority because it has not been reported. Otherwise the question of whether or not the judgment could or could not be so regarded would depend upon the mere whim of the reporter." But it must always be remembered that no decision can alter the law[2]. The authority of a report is of use only when it formulates certain legal principles[3]. Every case as it arises must be decided on its own facts and not on its supposed analogy to other cases[4].

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1. Vide also Section 3 of I. L. R. Act, 1875 (XVIII of 1875).
2. *Baijanath* v. *Puttamnund* 16 C. W. N. 621 vide also *Raicharan* v. *Kumud Mohan*, 1 C. W. N. 687.
3. *Emperor* v. *Haraprosad*, 40 Cal. 477.
4. *Queen Emp.* v. *Gobordhan*, 9 All. 528.

CHAPTER III.

DEFINITIONS AND LEGAL MEANING OF SOME WORDS USED IN THE CRIMINAL PROCEDURE CODE.

Bailable Offence—means an offence shown as bailable in the Second Schedule of the Criminal Procedure Code, or which has been made bailable by any other law which is for the time being in force[1].

Non-bailable Offence.—means an offence other than a bailable one.

Charge—means the order of the Court directing the accused to meet the specific case against him.

Cognizable Offence—means an offence and the cognizable case means a case in which a Police-officer, within or without the Presidency towns may, in accordance with the Second Schedule of the Criminal Procedure Code or under any law for the time-being in force, arrest without warrant.

Complaint—means the allegation made orally or in writing to the Magistrate with a view to his taking action under the Criminal Procedure Code that some person whether known or unknown, has committed an offence, but it does not include the report of a Police-officer. A complaint need not be made by the person injured ; it may be made by any one who has come to know of the offence[2]. The complaint must be made

1. Sec. 4 Cr. P. C. (b).
2. *Deder Box* v. *Shyamapuda*, 41 Cal. 1013. *Emp.* v. *Keshablal*, 21 Bom. 536.

to a Magistrate with a prayer for taking action. A petition alleging an offence but expressing no desire to prosecute the offender is not a complaint[1].

Report of a Police-officer or a Police Report.—Police reports referred to in Sections 157, 173 and 190 (b) of the Criminal Procedure Code are reports made by the Investigating Police-officers in cognizable cases. If a Police-officer makes a report in a non-cognizable case, it is not a police report. It is rather an information or at best a complaint[2].

Enquiry—includes every enquiry other than a trial by a Magistrate or a Court. Enquiry is not limited to cases of offences or accused before the Court.[3]

Trial—means proceedings after the charge is framed. Proceedings under Sections 117, 145 are enquiries[4].

Investigation—includes all the proceedings under the Criminal Procedure Code for the collection of evidence conducted by a Police-officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. The object of the investigation is the collection of evidence and that of

1. *Bhamansing* v. *Haluman*, 6 C. W. N. 926.
2. *Emp.* v. *Sada*, 26 Bom. 150.
Chidambaram v. *Emp.*, 32 Mad. 3 at pp. 10.
Harihar v. *Emp.*, 23 C. W. N. 481.
3. *Alimahammad* v. *Tarak*, 13 C. W. N. 420.
Emp. v. *Motilal*. 46 Bom. 61.
4. *Alimahammad* v. *Tarak*, 13 C. W. N. 420.

enquiry is taking of evidence in the case and determining the truth or otherwise of the allegation[1].

Judicial Proceeding—includes any proceeding in the course of which evidence is or may be legally taken on oath. A judicial proceeding under the Penal Code is a proceeding before a Judge (as defined in the Indian Penal Code)[2].

Non-cognizable Offence—means an offence and non-cognizable case means a case in which a Police-officer within or without a Presidency Town may not arrest a person without warrant.

Offence—means any act or omission made punishable by any law for the time being in force. It includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act of 1871. Nothing is an offence which is not made so by law. A person called upon to furnish security under Sections 107 to 110 of the Criminal Procedure Code is not charged with any offence and an order in such a case is not a punishment[3]. The acts complained of in proceedings under Sections 133, 144, 145 of the Criminal Procedure Code are not offences .An order in a 145 Cr. P. C. case is preventive and not punitive[4].

Pleader—includes a Mukhtear under the amended Criminal Procedure Code [Vide sec. 4 (r)]. Previously a

1. *Amrita Maji* v. *Emp.*, 46 Cal. 851., (See 4 (l). Cr. P. C.)
2. *Emp.* v. *Purusotam*, 45 Bom. 834 (837).
3. *Shankarganesh* v. *Secy of State*, 49 Cal. 845 P. C.
   In re Govind 25 Bom. 48.
4. *Kefatullah* v. *Feraauddin*, 5 C. W. N. 71.
   Forbes v. *Ali Haidar* 53 Cal. 46, 49

mukhtear was not entitled to practise generally and as of right in any Criminal Court. This anomaly has been removed by Act XXXV of 1923. Now a mukhtear can practise in Criminal Courts as of right.

Warrant Case—means a case relating to an offence, punishable with death, transportation or imprisonment for a term exceeding 6 months.

Summons Case.—means a case relating to an offence and not being a Warrant case. A Summons case is a simple case in which an offender may be imprisoned for a term up to 6 months. The procedure of trial in a Summons case is different. This will be dealt with in its proper place

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CHAPTER IV.

CLASSES OF CRIMINAL COURTS.

Classes of Criminal Courts.—Besides the High Courts and the Courts constituted by any law other than the Criminal Procedure Code, there are other Criminal Courts in British India, e. g.,—

(i) Courts of Session,

(ii) Presidency Magistrates,

(iii) Magistrates of the First Class,

(iv) Magistrates of the Second Class,

(v) Magistrates of the Third Class.

A Presidency Magistrate is not a Magistrate of the First Class under the Code[1].

Apart from the above group, there are Municipal

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1. *Emp.* v. *Chotta* 32 Mad. 303.

Magistrates appointed under Act III of 1899 B. C. (Bengal Council) and other Magistrates appointed under Local Acts.

Moffusil Magistrates exercise both judicial and administrative functions District Magistrates generally perform administrative functions within their jurisdiction. A Magistrate is not a Magistrate under the Criminal Procedure Code when he is engaged in administrative works.

A Province is divided into different Districts and each District into Sub-divisions for the convenience of the people. The Local Government has established Courts of Session for every Sessions Division. A Magistrate in charge of a District is called a District Magistrate and a Magistrate in charge of a Sub-division is called a Sub divisional Officer. There are Magistrates subordinate to the District Magistrates and Sub-divisional Officers. The Local Government may appoint Special Magistrates for trial of particular kind of cases within specified areas and vest them with powers which can be conferred under the Criminal Procedure Code. Besides, the Local Government may also appoint persons as Honorary Magistrates. These Magistrates try cases and exercise powers with which they are vested. Different Local Governments have made rules for the guidance of Benches of Magistrates[1]. These rules generally provide that the

1. Bengal Rules, Calcutta Gazette 1889 Pt. I. pp. 1071.

Madras Rules Fort St. George Gazette 1891 Pt. I. pp. 879, 923 and 1095.

For C. P. Rules see C. P. Circular 1908 p. 4.

opinion of the majority shall prevail, and that when the numbers are even, the Chairman shall have a casting vote. The Chairman shall generally record evidence and judgment, but this can be performed by any of his colleagues with his consent. Benches of Magistrates may refer any point for opinion to the District Magistrate or any Sub-divisional Magistrate. Magistrates and Benches of Magistrates are subordinate to the District Magistrate. An Assistant Sessions Judge is subordinate to the Sessions Judge of the Division.

The Local Governments have also appointed Presidency Magistrates who exercise jurisdiction within the Presidency towns. All Presidency Magistrates have co-ordinate jurisdiction.

Under section 18 of the Criminal Procedure Code. a Bench can exercise the full powers of a Presidency Magistrate. The Chief Presidency Magistrate distributes business and regulates constitution of the Benches. The rules for the guidance of Benches of Presidency Magistrates have been framed by different Governments[2].

The Local Government may, besides, appoint Justices of the Peace. Some high Government Officials are *ex-officio* Justices of the Peace. These gentlemen in cases of emergency exercise the power of a First Class

2. Vide Calcutta Gazette 1901 Pt. I. 711.

Notification No. 18 Fort St. George Gazette Pt. I. 1911 pp. 7 and 8.

Bombay Notification No. 2536 dated 19. 5. 1904.

Magistrate under Section 36 of the Criminal Procedure Code.

Trial by Benches of Magistrates—The Local Government may or subject to the control of Local Government, the District Magistrate may, make rules consistent with Cr. P. C. for the guidance of the Benches[1]. No order or judgment of Benches of Magistrates shall be invalid by reason of only change having occured in the constitution of the Benches in any case in which the Bench by which such order is passed, is duly constituted—provided the Magistrates constituting the same have been present on the Bench throughout the proceeding, that is to say all the Magistrates who take part in the judgment must have been present throughout the trial. In other words an Honorary Magistrate cannot take part in the judgment and pass sentence in a case unless he had been a member of the Bench during the whole of the hearing[2]. A trial began before a Bench of Magistrates. On an adjourned date of hearing, only one Magistrate who attended on the first occasion was present, the trial proceeded and ended in a conviction. Collins, Kt., C. J. and Best J. *held* that the trial was illegal and the conviction was set aside[3].

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1. Secs. 15, 16, Cr. P. C.
2. *Hardwar* v. *Kheyaojha*, 20 Cal. 870.
3. *Queen Empress* v. *Basappa*, 18 Mad. 394=2 Weir. 17. See Sec. 350 (a) Cr. P. C.

CHAPTER V.

ORDINARY AND EXTRAORDINARY POWERS OF COURTS.

Powers of Courts.—A High Court may pass any sentence authorised by law. A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be *subject* to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation for a term not exceeding seven years or of imprisonment for a term not exceeding seven years.

The Courts of Magistrates may pass the following sentences, namely :—

(a) Courts of Presidency Magistrates and of Magistrates of the First Class :—(i) Imprisonment for a term not exceeding two years, including such solitary confinement (see Penal Code) as is authorised by law; (ii) Fine not exceeding Rs. 1000/-; (iii) Whipping.

(b) Courts of Magistrates of the Second Class :—(i) Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law; (ii) Fine not exceeding Rs. 200/-.

(c) Courts of Magistrates of the Third Class :—(i) Imprisonment for a term not exceeding one month; (ii) Fine not exceeding Rs. 50/-.

A Magistrate may pass any lawful sentence, combining any of the sentences which he is authorised by law to pass[1].

An offence under any Local Act is ordinarily triable by the Court mentioned in the Act; where no Court is specifically mentioned, such an offence may be tried by the High Court or by ordinary Courts.

Imprisonment in default of fine[2].—The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law, in case of such default :

Provided that—

(a) the term is not in excess of the Magistrate's powers under the Code ;

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of substantive sentence, the period of imprisonment awarded in default of payment of fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate.

Special Magistrates and their powers.—The Local Government in certain territories may invest the District Magistrate or any Magistrate of the First

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1. Sections 31 and 32 of the Criminal Procedure Code.
2. Section 33 of the Criminal Procedure Code.

Class with powers to try as a Magistrate, all offences not punishable with death[1]. Such a Special Magistrate may pass any sentence except a sentence of death or transportation or imprisonment exceeding seven years[2]. Where there is sufficient evidence to constitute an offence of murder, a Special Magistrate cannot try the case on a minor charge[3].

Conviction for several offences at one trial.—The Court can direct the sentences of imprisonment passed for different offences to run concurrently or consecutively; but the aggregate punishment shall not exceed twice the amount of punishment which the Magistrate is ordinarily competent to inflict.

Appeal in such cases'—For the purpose of an appeal, the aggregate of consecutive sentences shall be deemed to be a single sentence. Where an accused has been sentenced to concurrent imprisonment, no one of which is appealable, no appeal lies.

Ordinary and additional powers of Magistrates.—Such powers have been mentioned in Schedules III and IV of the Criminal Procedure Code. Please refer to these Schedules.

Mandamus.—The power to issue *Mandamus* was transferred to the Presidency High Courts under Sec. 24, 25 Vic. Clause 104 Section 9. The Supreme Court had powers under Clause 21 (Letter's Patent, Calcutta),

1. Section 30 of the Criminal Procedure Code.
2. Section 34 of the Criminal Procedure Code.
3. *Emp.* v. *Paramananda,* 10 Cal. 85.

Clause 47 (Letter's Patent, Madras) and Clause 69 (Letter's Patent, Bombay) to issue *Mandamus* within the Presidency Towns for enforcing orders issued by the High Courts. The High Courts of Allahabad, Patna, Lahore and Rangoon have no power of issuing *Mandamus*. By issuing *Mandamus* the High Court can compel the authority on which it is issued—to do certain acts. When a prisoner is entitled to get a bail and it is refused by a Subordinate Court, inspite of the prisoner offering sureties, the High Court can issue *Mandamus* for releasing the prisoner on bail. In the case of *Queen Emp.* v. *Thomas Brae*[1] it was observed that "the Law Officers and the Government might apply for a *Mandamus*. Even here the *Mandamus* could go no further than to order a Justice of the Peace, who had refused to entertain a case, where he obviously had a jurisdiction to take it up." An application for issue of *Mandamus* is seldom made where the ordinary law is sufficient to meet the demands of justice.

Habeas Corpus.—Any High Court may, whenever it thinks fit, direct that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law or to be examined as a witness or removed from one custody to another for the purpose of trial and for dealing with the person according to law. The High Court can order that a person illegally or improperly detained in public or private custody be set at liberty.

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1. 3 W. R. 64.

The provisions as to *Habeas Corpus* have been embodied in Sec. 491 Cr. P. C. The section aims at protecting personal liberty of a British subject. An executive order curtailing liberty of a subject may be a ground for issue of a rule of *Habeas Corpus*. The High Court, however, while dealing with the application for a *Habeas Corpus*, cannot adjudge the policy of the Government, nor the conduct of the latter in dealing with State prisoners, nor the wisdom of the policy of any act of the Government.

Procedure for making an application for Habeas Corpus.—An application for *Habeas Corpus* shall be made without unreasonable delay. In the matter of *Amritalal Dey*, Phear J. observed : "it is incumbent on the applicant in a case like this to come at once to the Court without delay"[1]. The application should generally be supported by an affidavit. Ordinarily a rule *nisi* to show cause is issued by the Court in the first instance. Such rules were issued on the Jail Superintendent of Alipore in the case of *Horace Lyall*[2], and on the Commissioner of Police in the case of *Cullington*[3]. The High Court passes orders after hearing both sides.

Inherent power.—Section 561-A. Cr. P. C. lays down that nothing in the Cr. P. C. Code is to affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order

1. 1 Cal. 78 at pp. 91.
2. 29 Cal. 286.
3. 48 Cal. 328.

under the Code or to prevent the abuse of the process of any Court or otherwise to secure dispensation of justice. The said section was added to the Code by Act XXVIII of 1923. An analogous provision for the Civil Courts was embodied in Section 151 of the Civil Procedure Code. Previous to the enactment of Section 561-A some High Courts were of opinion that the High Courts possessed the powers while other High Courts entertained doubts on the point. This difficulty was removed by the enactment of the above section. In fact Section 561-A does not confer new powers but merely declares such inherent powers as the Court already possessed. Under this section, the High Court can order restoration of articles wrongfully delivered by the Magistrate to the complainant. It can order the police to allow reasonable opportunity to the prisoner for interviewing his pleader for instructing him regarding the defence to be taken[1]. Under this section the High Court can, in a fit case, stay criminal prosecution arising out of a civil litigation[2].

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1. 50 Bom. 241.
2. *Ichangir v. Framji*, 30 Bom. L. R. 962.

CHAPTER VI.

FIRST INFORMATION REPORT AND POLICE DIARY.

What is First Information Report.—Every Police-officer in charge of a police station is bound under Section 154 Cr. P. C. to record the information relating to the commission of a cognizable crime, which may be given to him by any person. This information, however, may be either in writing or oral. It is the initiation of every criminal case taken up by the Crown against subject. The First Information Report is the most important thing for the purposes of a case. Every Local Government has prescribed a form for the record of the First Information Report. This form contains directions for recording the information of the crime as it is reported by the informant and also requires the officer recording it to note down certain other particulars (*See Page 47*). Besides, there is an express direction upon the officer recording the "First Infotmation" to read over the whole information as it is recorded to the informant and to have it signed by him.

The expression "First Information" has been construed literally to mean the information which actually reaches first in point of time to the officer-in-charge of a Police Station[1]. The significance of the judicial pronouncement on the point as to what is really the

1. *Emp.* v. *Bhuthath*, 7 C. W. N. 345.
Emp. v. *Chandrika* 1 Pat. 401.

"First Information" of the case is two-fold : (i) that at the trial of the case, the Court should be in a position to know on what particular type of report of an offence the investigation was started by the police and (ii) secondly, what the appearance of the case was, at its first blush, *i.e.* at the earliest possible opportunity after the incident[1]. Thus where a Police-officer after receiving the First Information Report does not record the same, but straight proceeds to the locale, and, there, after enquiring into the incident, records the First Information, he adopts a procedure which is not contemplated by law. The information which a Police-officer receives after the investigation is started may justly be considered as a part of statement of witnesses recorded during investigation under Section 162 Cr. P. C.[2]. It was therefore, *held* that, the information obtained during enquiry cannot be made any part of the First Information[3]. In view of the law on the subject, it is necessary for the defence lawyer, in every case, to ascertain from the Investigating officer, points which would show that the First Information was duly recorded according to the provisions of Section 154 Cr. P. C. and that it contained nothing beyond the informant's statements as it reached him before the commencement of the investigation.

1. *Khijiruddin* v. *Emp.*, 53 Cal. 372 at page 381.
2. *Emp.* v. *Chinnaramana*, 31 Mad 506.
   See Re : *Sivan Chetti*, 32 Mad. 258.
3. *Peari* v. *Weston*, 16 C. W. N. 143.
   K. E. v. *Bhutnath*, 7 C. W. N. 345.

The value of the First Information Report.—The importance of studying the First Information Report very carefully cannot be too much emphasised. In fact it is of the utmost importance in the conduct of a cognizable case. First Information Reports may be classified under two broad divisions :—

(i) Where the informant is himself cognizant of the crime or claims to have seen the occurrence or any part of it :

(ii) Where the informant is an agency of conveying the report from some one cognizant of the crime.

In the case of information coming under the first head, every detail of the incident is of very great use[1]. Thus, where it appeared to the Court that the informant claimed first hand knowledge of the crime and also had acquaintance with the accused, the omission of the name of such an accused person from the First Information was a vital defect in the prosecution case which could not be cured by evidence of witnesses in the trial, in view of the fact that such an omission was an extremely unlikely factor and could not be accidental. The argument that the First Information is not a detailed account of the case or a complete picture of the crime and the criminal act—would not apply in a case like this[2].

If the prosecution case differs materially from

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1. *Peary Mohan* v. *Weston*, 16 C. W. N. 145.
2. *Emp.* v. *Sada*, 11 Cr. L. J. 99.

the account of the incident as given in the First Information, it becomes really very shaky[1].

The case is, however, somewhat different when the First Information is given by an individual not acquainted with the facts of the case. Strictly speaking the First Information given by a person unacquainted with the facts of the case reported is hearsay[2]. The value of the First Information Report in such a case is much less than when the informant speaks from personal knowledge. In cases of this description the statement of the informant may be utilised to contradict any witness from whom the report was obtained by him before communication to the Police Station. But it must be noted in this connection that although the First Information is not admissible in evidence against the accused, the account of the crime as recorded in the First Information Report may be utilised under Sections 155, 157 and 158 of the Indian Evidence Act to corroborate or contradict the informant, if he figures as a witness at the trial.

(*See "Cross-examination of Witnesses" in Part VI*).

Police Diary: Its value as evidence.—A Police-officer during the investigation of a case has to record the statements of witnesses examined by him and submit a report under Section 173 of the Cr. P. C. in the prescribed form setting forth the names of parties, the nature of the evidence and also stating whether the

1. *Emp.* v. *Nakir Jharudar*, 9 C. W. N. 474.
2. *Emp.* v. *Muhamed Yunus*, 50 Cal 318 at pp. 326.

accused, if arrested, has been forwarded in custody or released on bond or bail. An accused person is entitled to get a copy of the report submitted by the police[1]. The Magistrate on receipt of the Police Report can proceed against the accused if he thinks that there is sufficient evidence against him. In the course of the investigation the Police-officer has to record in his diary, the time and place where he had been, in connection with the investigation and record the names and statements of the witnesses examined by him. The Police-officer may record the statements of the witnesses in full or may, if he thinks fit to do so, take a memorandum of the statements made before him. The diary containing the evidence recorded by the Police-officer during the investigation is commonly known as the "Police Diary". Police Diaries are not admissible as substantive evidence for corroborating the Police-officer. But under section 145 of the Evidence Act such diaries can be used by the defence lawyer for the limited purpose of contradicting any witness who was examined by the Police and is also examined in Court[2]. In the case of *Queen Emp.* v. *Mannu* their lordships *held* that if the Special Diary prepared under Sec. 172 of the Cr. P.C., of which the accused cannot get a copy is used by the Court to contradict a Police-officer or to refresh the memory of the Police-officer who made it, the accused person

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1. Section 173 Cr. P. C., Cl. 4.
2. *Queen Emp.* v. *Dalsingh*, 44 Cal. 876 P. C.
Queen Emp. v. *Mannu*, 19 All. 390 F. B.

or his agent has a right to see the portion of the diary which has been referred to for either of these purposes, that is to say, the accused person or his agent is entitled to see the particular entry and no more. A mere summary of facts ascertained by an Investigating Officer from persons examined by him, not being a report of their actual statements, may find a place in the Special Diary. Under Section 172 of the Cr. P. C., every Police-officer making investigation under Chapter XIV Cr. P. C., shall day by day enter his proceedings in the investigation in his diary, setting forth, the time at which the information reached him, the time at which he began and closed the investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation. Any Criminal Court may use such diary, not as evidence but to aid it in its enquiry or trial. The accused has no right to call for such diaries and to inspect them unless they are used by the Police-officer to refresh his memory or unless the Court uses them for the purpose of contradicting such Police-officer. The Court can peruse the diary for information which may be used as foundation for questions put to witnesses. Knox J. observed in *Queen Emp.* v. *Nasiruddin*[1] that statements in the Police diary "are recorded in the most haphazard manner and that in most cases they (Police-officers) are not experts of what is or what is not evidence. The statements are recorded often hurriedly in the

1. 16 All. 207

midst of crowds and confusion, and subject to frequent interruptions and suggestions from by-standers. Over and above all, they cannot, in any sense, be termed depositions, for they are not prepared in the way of a deposition; they are not read over to witnesses nor are they signed by the deponents. There is no guarantee that they do not contain much more or much less than what the witnesses said." The law has safeguarded the use of them.

CHAPTER VII.

POLICE INVESTIGATION Re. COMMISSION OF OFFENCE, BREACH OF THE PEACE, LAND DISPUTE, ETC.

Commission of Offence.

First Information: Rules relating thereto.—When an offence is committed, an information about it is often lodged at the Police Station. Every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a Police Station, must be reduced to writing by him or under his direction, and read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, is signed by the person giving it and the substance thereof is entered in a book kept for the purpose.

A constable has no power to prepare F. I. Report. He can enter an abstract of the information in the *General Diary* and it is his duty to send immediate information to the Sub-Inspector. Police-officers cannot defer drawing up First Information Report until they have tested the truth of the complaint.

Bengal Rules as to the Preparation of F. I. R.[1]**.**— (Rules on similar lines have been framed by the other Local Governments also).

RULES.

(1) If the information be given orally, it shall be recorded in plain and simple language, as nearly as possible, in the informant's own words. Technical or legal expressions or high-flown language or lengthy or involved sentences shall not be used.

(2) The Police-officer shall not administer any oath to the complainant.

(3) If a particular person be charged or suspected, the facts on which the suspicion is based should be clearly set forth. The informant should be required to distinguish what he professes to know, from matters of which he has only second hand knowledge.

(4) Persons charged shall be distinguished from persons suspected. The informant shall be asked to state distinctly whether he charges the person or persons he names, and only when he does charge them, shall the name or names be entered in Column 2 of the form. The names of suspected persons shall not be entered in Column 2. They shall be shown in the

1. P. R. B. 1915 Vol. 5 Rules 78, 79.

complainant's statement at the foot of the return. *If the informant says that certain persons were recognized, their names shall be clearly stated ; or if he is unable to say that any one was recognized, this shall be distinctly recorded at this stage.*

(5) In cases of delay in bringing the report of an offence, explanation of such delay shall always be demanded.

(6) The informant's statement, when complete, shall be read over to him and he shall sign it. Thumb impressions shall be taken when necessary. The report shall show that this has been done. In cases exclusively triable by the Court of Session and in Special Report cases the statement shall be read over to the informant in the presence of one or more respectable and uninterested witnesses who shall also be asked to sign it.

(7) The upper portion of the First Information Report Form shall be filled in and signed by the officer-in-charge. The statement at the foot shall be signed both by the informant and by the Police-officer.

List of properties lost.—In cases involving loss of properties, the complainant shall be required to put a list of the properties stolen, signed by himself, which shall be sent to the Court officer with the First Information Report. The Investigating Officer shall keep a copy of the list to aid him in his inquiry. If the complainant is unable to furnish a list of the properties when he gives the first information, the Investigating Officer shall prepare such a list as soon after his

arrival at the spot as possible, and forward it, duly signed, by the complainant, to the Court officer.

Copies of F. I. R.: how dealt with.—The first page of the First Information Report, *viz*, that signed, sealed or marked by the complainant or informant under Section 154, Criminal Procedure Code, is treated as the original. It is sent without delay to the District Magistrate or the Sub-divisional Magistrate, as the case may be, through the Court officer. The first carbon copy of the First Information is forwarded to the Superintendent of Police. The second copy of the First Information is kept at the police station for future reference. A copy (not carbon) has to be sent to the Circle Inspector direct at the same time as the original.

Arrest of accused.—Alteration of F. I. R.—Steps should be taken for immediate apprehension of the accused in case of serious offences like dacoity and murder. F. I. R. once prepared can under no circumstances be cancelled.

First Information Report.

FORM

First Information of a cognizable crime reported under Section 154, Criminal Procedure Code, at Police Station—Aurangabad.

Aurangabad Sub-division Gaya District.

No. 31 Date and hour of occurrence—

27. 1. 37 at 1 A. M.

Date and hour when reported.	Place of occurrence and distance and direction from Police Station and jurisdiction number.	Date of despatch from Police Station.
27. 1. 37. 5 A. M.	Hasanda N. E. 6 miles J N. 14.	27. 1. 37. 8. A. M.

N B. A first information must be authenticated by the signature, mark or thumb impression of informant and attested by the signature of the officer recording it.

Sd/- Kailan Ojha
Informant.

Sd/- S. Maichel
S. I

Name and residence of informant and complainant.	Name and residence of accused.	Brief description of offence with section and of property carried off, if any.	Steps taken regarding investigation, explanation of delay in recording information.	Result of the case.
Kailan Ojha of Hasanda himself complainant.	Jaboo Kheroo Naini Chumroo and about 15 others.	Dacoity at the house of the complainant. See 395 I.P.C. Property worth Rs. 900 carried away.	Investigation taken up at once Left for spot No delay.	

Signed............S. Maichel.
Designation......S. I., Aurangabad P. S.

(First information to be recorded below)

Note :—The signature, seal or mark of informant should be affixed at the foot of the information.

At about 1 A. M. in the morning some 20 men armed with *daos, lathis*, and guns entered inside my house by breaking open the front door. The dacoits then forced their way into my room on the N. E. corner of the house. I had lighted up a hurricane lantern on hearing noise. With the help of that light my wife and I recognized 4 men (named above). Jaboo tied my hands with a rope, Kheroo beat my wife with a *lathi* and she fell down senseless. The dacoits then took over from me, the key of the iron safe, at the point of a dagger. They next opened the iron safe and removed the following articles :

(1)

(2)

etc.

After this, the dacoits left. My son aged 20 was in the next room ; he could not come out due to fear. The hue and cry which the inmates of my house raised drew a good few of our neighbours shortly after the culprits had made good their escape. Dr............ was sent for : he came in about an hour's time and gave my wife first aid. She regained consciousness after two hours or so when I left for the thana.

Sd/- Kailan Ojha	Sd/- S. Maichel
Signature of informant.	Signature of S. I. recording the F. I. R.

Read over to the informant who admitted that it was correctly recorded and then signed in my presence.

Sd/- S. Maichel.
S. I.
27. 1. 37.

General Diary.—*General Diary* is the book prescribed by Sec. 155 Cr. P. C., for the entry of all information received in respect of offences. It should be kept in all Police Stations, Beat-houses and Section-houses. The officer-in-charge is responsible for correct and punctual entries in the *General*

Diary. The Diary has to be written in duplicate with carbon paper. Every occurrence brought to the knowledge of the police must be immediately entered in the *General Diary*, as concisely as is compatible with clearness. It should contain all complaints and charges preferred, whether cognizable or not, the names of the complainants, names of the persons suspected, the offences alleged to have been committed by them, the weapons or property of which police has taken possession. These apart, all information regarding matters of public importance should also be entered in the *General Diary*[1].

Non-cognizable case : Police to refer party to Court.—In a non-cognizable case the Police-officer refers the complainant to the Court.

Duty of the Police-officer on receipt of the First Information : Investigation.—No Police-officer has power to investigate a non-cognizable case without the order of a Magistrate of the First and Second Class, having powers to try such case or to commit the same for trial. Any Police-officer receiving such order may exercise all the powers in respect of the investigation, except the power to arrest without warrant, which an officer-in-charge of a police station may exercise in a cognizable case.

Investigation into Cognizable Case at the spot : where not necessary.—If the case be a cognizable one, the Police-officer may investigate the case. Any Magistrate empowered by Sec. 190 also may order

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1. P. R. B. Vol. 5. Rule 138.

police investigation. A Magistrate can order police inquiry only where he does not, himself issue process at once. An officer-in-charge of a police station, in case of a cognizable offence, is to proceed under Sec. 157, Cr. P. C Such an officer has to forthwith send a report of the same to a Magistrate empowered, to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his sub-ordinate officers, not being below such rank as the Local Government may, by general or special order, prescribe in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender: Provided as follows:—

(a) When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer-in-charge of a police station need not proceed in person or depute a sub-ordinate officer to make an investigation on the spot;

(b) if it appear to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of the cases mentioned in Clauses (a) and (b) of the proviso to sub-section (1), the officer-in-charge of the police station shall report the reasons for his actions and in the case mentioned in Clause (b) such officer shall also forthwith notify to the

informant, if any, in such manner as may be prescribed by the Local Government, the fact that he will not investigate the case or cause it to be investigated[1].

Investigation: where not necessary.—No investigation is necessary in case the injured person does not wish for an inquiry and also where the case appears to be of a purely civil nature.

Proceeding to spot.—If the officer-in-charge of a police station decides that an investigation is necessary, he should after despatching the F.I.R., himself proceed to the spot or depute his sub-ordinate to hold an inquiry.

Two classes of cases: Accused—known and unknown.—There are two classes of cases, *e.g.* (1) cases in which guilty persons are unknown and (2) those in which they are known and named in the F. I. R. or at an early stage of the inquiry. There is no justification for the police for prolonging investigation of cases which come under the second class.

Charge-sheet: Final Report.—As soon as the investigation is completed the *Charge-sheet* (where the accused is sent up for trial) or a *Final Report* (when in the opinion of the officer he cannot proceed), shall be sent in. It is for the Investigating officer to determine what evidence is necessary to establish a charge and what number of witnesses is required to prove each fact.

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1. See 157 Cr. P. C.

Confession : Duty of the Investigating Officer.—If an accused or a suspected person volunteers confession, a Police-officer should send him to a Magistrate for recording the confession. The Investigating officer may get valuable information from the confession, but it is his duty not to rely unduly on confession or admission but to try to find out all available evidence in support of the prosecution. The officer should obtain circumstantial and oral evidences in support of the case. If he succeed, that will help him in judging the nature and character of the confession. The Police Rules condemn the obtaining of a confession first and securing corroborative evidence afterwards[1].

The confession recorded may, in some cases, require verification.

Verification of confession.—The Police Rules require verification of a confession to begin from the spot where the crime had its first conception and proceed, in strict order of chronology of events, to the point of its culmination, and further beyond, where needed, to discovery of any find. The advantages of verification of a confession are obvious ; it shows up concoction, and confirms a coherent story. Sometimes a prisoner from jail becomes an informer and the Investigating officer has to interview him in jail. If the confession stands the test of verification and circumstances are such as lend credibility to the story as given by the

1. P. R. B.

prisoner, the informer may be granted pardon and made an approver. (For details *see Part I, Chapter X.*)

Dying Declaration.—Sometimes it happens, in dacoity or murder cases, that a person whose evidence is essential for proving the prosecution story, is in imminent danger of death and that his statement should be recorded. Every attempt should be made to have these statements record by a Magistrate. If a Magistrate be not handy, and the dying declaration has to be recorded by a private individual, it should be done, whenever possible, in the presence of the accused and trustworthy witnesses.

A dying declaration made to a Police-officer, has to be signed, if possible, by the person making it, under the provision of Section 162 Cr P. C.

Identity of articles.—A Police-officer has often to satisfy himself that the articles seized in a 'search' are really the articles stolen from the house of the complainant. This should put him in quest of any mark or marks of identification on the articles. Thus, where an ornament found on search may connect the accused with the crime, the goldsmith who prepared it, may be called to identify it, by the production of his accounts showing weight of the ornament and its specifications. Inmates of the complainant's house may also appropriately be examined to prove this part of the case. The description of the articles and their specifications, as given in the F. I. R., is just another piece of corroborative evidence. All articles seized at the search should be properly labelled with the necessary remarks.

Finger impression.—In dacoity and murder cases it often happens that an accused has left blood-stained finger-marks, on some articles at or near about the place of commission of the crime. The Investigating Police-officer removes the marks, and sends them to the finger impression expert, for amplification and production at the trial for comparison with the finger marks of the accused.

In a case where a finger mark cannot be removed conveniently, arrangements are made for taking photograph of those impressions, and these serve the purpose of identification satisfactorily, in very many cases.

Blood marks.—If at the time of the investigation on the spot, blood marks are noticed or if any cloth or article covered or stained with blood are found, the Investigating officer has to send them to the Government Chemical Examiner for ascertaining by analysis, whether the blood is human blood or not. As blood marks are almost invariably associated with the spot of a murder or like offences *e.g.*, stabbing or injuring with a sharp cutting or deadly weapon, the Chemical Examiner's Report taken with the evidence of the Police-officer may negative, any attempt on the part of the defence to shift the place of occurrence from where it is fixed by the prosecution case.

Recording statements of witnesses.—An Investigating officer has discretion, under Section 161 of the Criminal Procedure Code, to record the statement of any witness examined by him. All such

statements shall be signed and dated by the officer recording them and by the superior officer locally supervising the case. No such recorded statement is in itself admissible in evidence. When however, the witness whose statement has been so recorded, is called for examination by the prosecution, the accused under Section 162 Cr. P. C., is entitled to ask the Court to refer to the statement. After such reference, if the Court thinks it expedient in the interest of justice (and not otherwise), it may direct that the accused be furnished with a copy of the statements. The witness who made the statement may afterwards be questioned with regard to it, in order to impeach his credit, as provided in sec. 155, Clause 3 of the Indian Evidence Act. Should he deny that he said anything recorded therein, the Police-officer who recorded the statement may be examined with regard to it, and shall be allowed to refresh his memory by referring to the whole or any portion of the statement in order to contradict the witness. In all serious cases, the statements of important witnesses are recorded under Section 161 Cr. P. C. The Investigating Officer *may* record the statement of a witness even if he thinks that he is not speaking the truth or is likely to alter his statements subsequently. A dying declaration should always be recorded. Heinous cases may be held to include all cases triable exclusively by the Court of Session.

Injured person on the spot : Duty of Police.—If the Police-officer finds on the spot that one or more

persons have been injured, he sends him or them as quickly as possible to the Government hospital and may also call local doctors for rendering first aid. Arrangements are also made in important cases, for the recording of dying declarations of injured persons.

Corpse : If found.—*Inquest Report*—**Duty of Police**—*Post-mortem* **examination.**—If there is any murder, the Police-officer has to hold a *Suratal* (inquest) and draw up an *Inquest Report*. In the *Inquest Report* the place where the body was found, the condition of the body, on which side the head of the corpse lay, the injuries noticeable on the body etc., should be noted in the presence of the witnesses. The Police-officer subsequently proves his *Inquest Report* in Court. After holding an inquest, the corpse is sent in charge of a constable, accompanied by a person able to identify the dead body, to the Medical Officer for holding a *post-mortem* examination. The constable carries with him a 'command certificate' on which the date and hour of his arrival is noted by the Medical Officer. Both the constable and the person accompanying him identify the dead body before the doctor who holds the *post-mortem* examination. The Medical Officer holding the *post-mortem* examination submits his report to the Superintendent of Police ; he may, if he so desires, also send a copy to the Investigating Police-officer.

FORM OF INQUEST REPORT.

I, Syed Islam, S. I., Tamluk, Midnapur, held inquest on the dead body of Ram Lal Ojha on 4-1-37, at

Bilaspur, P. S.—Tamluk, in the house of the deceased.

Names of witnesses present at the inquest :—

(a) Ram Sing.

(b) Upen Sadhukhan.

(c) Bipin Shah.

(d) Nilmadhab De.

Dead Body where found.—On a *charpoi* in the South East corner of a room, in the eastern portion of the house. The bed and the bed-sheet were covered with blood all over.

Condition of the Deceased : *Where his dead body was found* : *his wearing clothes.*—The head was resting on a pillow which was on the northern side. The body was lying flat on the back with blood marks.

Injuries noticed.—A gaping wound 2″ × 3″ on the right shoulder, another 1″ × ¾″ on the left elbow, and another gaping wound on the right side of the skull 3″ × ¼″.

Time of the Inquest.—4 A.M.

Steps taken.—Body sent in charge of constable Ram Sing, (No. 43), to the Civil Surgeon, Midnapur for *post-mortem* examination at 5 A.M.

Signature of Witnesses :

(a) Sd/- Ram Sing.

(b) „ Upen Sadhukhan.

(c) „ Bipin Shah.

(d) „ Nilmadhab De.

Sd/- Syed Islam, S. I., Tamluk.

Dated, 23-6-37. Signature of the Police-officer.

Rape case : Chemical Examination.—In a rape case the Police-officer should send the lower garments worn by the woman assaulted, for chemical examination.

Case of suspected poisoning.—The Police-officer should collect any food, drink, tobacco, or drugs, vomited matter found near the dead body and also clothing, medicine etc. He should ascertain the time of the appearance of symptoms and that of death. Every material regarding the state of health of the deceased, the alleged malady, its symptoms, its onset and progress up to the point of death should be gathered by the Investigating officer and supplied to the Medical Officer.

Case of suspected hanging or strangulation[1].—The Police-officer should make a note of the following points :—

(a) lividity of lips and eyelids,

(b) projection of eyes,

(c) state of the tongue—whether compressed between the lips or not,

(d) escape of any fluid from mouth or nostril, —the direction of flow.

On removing the strangulating medium the officer should note the state of the neck and whether it is bruised along the line of strangulation and whether the mark is circular or oblique and also note whether the thumb crossed over the palm. The condition of the skin whether smooth or rough, and marks of injury

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1. P. R. B. (Govt. directions).

on the body, if any, should be carefully examined and noted.

[N. B.—*The necessity of most of these notes have been explained in Part VI.*]

Preparation of map and taking custody of *Alamats*.—In all important cases the Investigating Police-officer prepares a rough sketch of the place of occurrence showing important things, *e.g.*, house, pathway etc., in the neighbourhood. In cases of dacoity, the rooms where the occurrence took place or in case of a riot, the plot of land where the riot occurred, should be shown. The sketch need not be on any scale. The officer may make necessary notes regarding possession of different rooms, of boundary lands, the places where articles like burning torches, sticks, etc, were left by the culprits. The Investigating officer will be examined in Court to prove his map. *The map will be marked as an exhibit, excluding the notes made by the officer on it, because those notes were made from the statements of other persons.* The officer will also prove that he took charge of the articles *e.g.*, broken trunks, *lathis*, torches etc., which he found on the spot, during the investigation. He will identify those articles in Court and those will also be marked as *exhibits* in the case. These articles are commonly called *Alamats*.

Case Diary : what it contains.—*Case diary* is kept by the Investigating Police-officer under Section 172 Cr. P. C. The Investigating officer is required to show in the diary, the time at which the information reached him and the time at which he began and

closed the investigation, particulars of house-searches made, the names of the witnesses in whose presence the search was made, the hour of the search, the places where arrests were made, the place where properties were found, with a statement of the circumstances ascertained by investigation. The statement of the witnesses need not be recorded in the *Case diary* but names of witnesses should be mentioned.

Case of counterfeit coins.—The Police-officer should seize the materials for counterfeiting coins including the chemicals used. He should also seize finished or unfinished counterfeit coins and send them to the Mint Master for assay. The Mint Master will examine the coin and send a report and later on the officer who examined the coins will be examined in Court as a witness, for the prosecution. He will also prove his report.

Case of Explosives.—The explosives found should be carefully handled and placed according to the prescribed rules and sent to the Criminal Investigation Department for taking necessary action in the matter.

Obscene publication.—This may be seized by a Police-officer during enquiries regarding these publications. The case will be dealt with by the Intelligence Branch of the Police.

Conspiracy Case[1].—These may be broadly classified under three heads—(1) Conspiracy for the commission of cognizable offences punishable with death, transportation or rigorous imprisonment for a term of two

1. Bengal Govt. Instructions in P.R.B. (See Sec. 196,196A Cr.P.C.)

years or upwards. Section 196-A Cr. P. C. imposes no new antecedent conditions prior to the institution or prosecution of cases of this class. (2) Conspiracy for commission of any non-cognizable offence or of any cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards. The initiation of proceedings in the second class of cases can be undertaken with the written consent of the District Magistrate or of the Presidency Magistrate in the Presidency towns. (3) The third class of conspiracy cases are those which come under the provisions of Section 196 Cr. P. C. In the third class of cases, prosecution can be instituted only with the prior sanction of the Governor-General-in-Council, the Local Government or some other officer empowered by the Governor-General-in-Council on this behalf.

Possession of land.—In case of a riot over possession of land as also in a case of land dispute likely to cause a breach of the peace the Police-officer has to take evidence of possession. In case of rioting and murder, the Police-officer must, at the outset, find from blood mark, condition of the crops and the like, the place where occurrence took place and then proceed to investigate about the possession of that land.

Evidence.—Starting of sections 107, 144 or 145 Cr. P. C. Cases.—In collecting evidence of possession the Investigating officer has to examine people holding or cultivating land in the vicinity, and to note boundary marks, tanks, etc, bearing on the question of possession. It is not necessary for

the officer to go into documentary evidence, except so far as it throws light on the present possession. A very recent Civil Court decree followed by delivery of possession or recent Record-of-Rights and the like may, with advantage, be examined.

When the Investigating officer finds one party in possession, he asks the Magistrate to take action against the other under sections 107 or 144 Cr. P. C. If the officer find himself unable to collect definite evidence of possession, he has to ask the Magistrate for taking action under section 145 Cr. P. C. The report should contain the reasons for apprehending a breach of the peace, and a summary of evidence, oral or documentary, which throws light on the present possession.

Breach of the Peace—apprehension : Duty of Police.—When a dispute in respect of landed property which is likely to lead to a breach of the peace is reported, the officer-in-charge of a police station has to take immediate action for prevention. He may issue a *'warning'* in the prescribed form to the owner, occupier or other person having or claiming an interest in such property. Such a warning brings the owner, occupier or person claiming interest in the property within the scope of section 154 I. P. C.

(The prescribed form of the Notice is given on the next page.)

Warning Notice under Section 154 I. P. C. to prevent a Breach of the Peace.

(FORM)

(This notice is issued by the Police.)

NOTICE

To

Ram Dalal Owner and Occupier.

At Village : Nimta.
Police Station : Veta,
District : Sahapur.

Sir,

Information has reached me of the likelihood of a breach of the peace in respect of a dispute regarding possession of the land situated at Nimta and bounded as below, in which you are interested as owner (or occupier). I have, therefore, to request you to use all lawful means in your power as required by Section 154, Indian Penal Code, to prevent any breach of the peace In order to impress upon you, your responsibility under the provision of the said section, it is reproduced on the back for ready reference.

[*N B. On the back Section 154 I. P. C. is printed.*]

Boundaries of the place on which / about which a breach of the peace is apprehended :—

1. North ... Fero Road
2. East ... Ranjit's land
3. South ... Park
4. West ... School premises

Police Station. Veta. Sd/- K. C. Das.
District. Sahapur. *Sub-Inspector of Police.*

Enquiry Slip.—A Police-officer holding investigation into a case may issue an '*Enquiry slip*' to any other Police-officer in the same Province or in a different Province asking him to make an enquiry (stating the nature) regarding suspected persons. The Officer after completing the enquiry sends back the counterpart of the slip to the Investigating officer.

The *Enquiry slips* are issued by the Calcutta Police for *ex-convicts* and *bad characters* who have left their homes. Such enquiries become necessary for ascertaining the immediate antecedents of the *bad characters* who reach Calcutta from their respective places of abode.

Searches.—It sometimes becomes necessary for the Investigating officer to search the houses of suspected persons. The officer conducting a search has to take every precaution to prevent the possibility of stealthy introduction into or removal from the house, of any article, while the search is in progress. Care should be taken that the witnesses are, as far as possible, unconnected with any of the party concerned or the Police.

During a search held under Sections 103, and 165 Cr. P. C., the particulars of the search are required to be entered in the prescribed printed form.

[*For Law as to Search and the Evidentiary value of a Search List—See Part I, Chap. IX Pages 89-91.*]

Form for Preparation of Search List.

1. Date and hour of search.—17. 1. 37—4 P. M.
2. Name and residence of person whose house is searched.—Butta Gope of Nimta.

*3. Name and residence of witnesses to search.—

1. Jadu Saha of..............................
2. Karim Mandal of..............................
3. Nanda Ghosh of..............................
4. Balaram Patti of..............................

1	2	3	4	5
Serial No. (each article to be given in separate or collective serial).	Descriptions of articles seized.	Description of the place where the articles seized were found.	Name, father's name, residence etc., of person ordinarily occupying the house in which an article is seized.	*Remarks.* —Here should be noted the serial no. in complainant's '*maltalika*' (list) and the exact circumstances under which all articles have been found. A note should also be made in case anything unusual is observed, such as remains of burnt papers, etc.)
3	(1) Brass *thalas.* (2) 1 pair gold bangles. (3) 2 pairs silver *Mals.*	In the bed room of Butta Gope in Village Nimta.	Butta Gope and his brother Nani Gope, sons of .... They have separate bed rooms where they live with their wives.	Found in a broken trunk below the bedstead of Butta Gope.

N. B. This form must be signed by witnesses.

* Articles seized, numbered, and labelled should be attested by signaturers of witnesses and Police-officers.

Permanent marks, such as cuts etc., must not be made.

Sd/- X, 17-1-37	Sd/- Y, 17-1-37.	Sd/- Z, 17-1-37
Signature with date, of the person whose property is seized, if present at search.	Sd/- K. M. Khan *Police-officer conducting the search. Place : Nimta.*	*Signatures of Witnesses with date. Signature by the accused (optional.)*

Identification of suspects.—In dacoity and rioting cases it becomes necessary for a Police-officer, during the investigation, to satisfy himself whether any suspected person was present at the scene of the occurrence. The Local Governments have framed rules to be followed by the officer for identification of suspects. The rules are, in the main, same. The Bengal Rules are contained in *the Police Regulations, Bengal*, 1915, Vol. 5. The said rules are reproduced below for information of the junior Practitioners :—

I. "Whenever it is necessary to submit a person suspected to have been concerned in any offence to identification, the proceedings should be conducted, whenever possible, by a Gazetted Police-officer or by a Sub-Registrar or if no such officer is available, in the presence of two or more respectable persons not interested in the case, who should be asked to satisfy themselves that the identification has been conducted *under conditions precluding collusion.* The identification proceedings should be undertaken as soon after the arrest of the suspected person or persons as possible, and care should be taken that before the commencement of the proceedings, the identifying witnesses are kept in charge of a Court-peon or other person not being a Police-officer at such distance from the place where the proceedings are held, as to have no chance of seeing the suspects. The suspected person should, if possible, be paraded along with 8 or 10 persons or if there are more than one suspect, with as many as 20 or 30 persons similarly dressed and of the same religion, and social status. Care should be

taken that the mixing up of the suspect or suspects with the other persons does not take place in view of the Police-officer and witnesses."

"Each indentifying witness should then be brought up singly in charge of the Magistrate's orderly or some other person, not being a Police-officer, to pick out the accused if he is able to do so. The identification by such witness should be conducted out of sight and hearing of other witnesses. If there is any fear that the identifying witness may be subjected to threats or injury, should they become known to the suspects, or to their friends, the witnesses should be allowed to view the persons paraded from a place where they themselves cannot be seen, as for instance through a window or an opening in a door or a wall. When the officer conducting the identification has satisfied himself that no communication between the Police and the witnesses was possible, he should give a certificate to that effect."

II. "When the identification is not held in the presence of a Magistrate, the witness should be prepared to testify to the fairness of the manner in which the identification was effected."

III. "These rules apply only to instances in which suspects have been arrested and have to be confronted with witnesses who express themselves able to recognise them by appearance, *although not previously acquainted with them*. When, as it frequently happens, the complainant or a witness states that amongst his assailants he recognised certain persons of his acquaintance, either by their appearance or by

their voice, no departmental rules can become applicable."

IV. "It should be borne in mind that the primary object of the identification proceedings is to test the ability of the witness to identify a suspected person and to ascertain whether there is sufficient evidence. It is not his (of the officer conducting the identification work) duty to record statements or put questions to suspects or witnesses except such as are necessary for the purpose of identification. While on the one hand the identification should be conducted with complete fairness and impartiality, on the other hand no attempt should be made to confuse or puzzle a witness or to create conditions which would render a witness who is honestly capable of identifying, incapable of doing so."

V. "An officer not below the rank of an Inspector, and preferably a Gazetted officer, shall invariably attend every identification proceeding to see that they are properly conducted. The Investigating officer, though his presence may be necessary outside, shall not be present while the identification is in progress. In a case of emergency, however, when the attendance of the Inspector or Gazetted officer cannot be procured without an amount of delay which is undesirable under the circumstances of the case, the Investigating officer may remain present to watch the proceedings on behalf of the Police."

Where the accused is an under-trial prisoner in jail, the Investigating Police-officer has to take the Magistrate's order for holding the identification parade by a

Magistrate authorised to do so, within the precincts of the jail compound. The defence lawyer tries to ascertain if the witnesses identifying the suspects had any opportunity of seeing them before, either through police aid or by any other means. The cross-examination of an Identification witness is generally directed to the above points. Some of the suspects may say before the officer, holding the identification parade, that the witness had seen him before, or that he was shewn to the witness at a particular place and time. These statements are generally noted down by the Officer in the '*Remarks Column*' of the Identification Sheet.

The form generally used is given on the next page.

Test Identification Form.

[Note :—Whenever it is necessary to produce any person suspected of having been concerned in any offence, for identification, particular care should be taken, pending the arrival of the identifying witnesses to keep the suspect in some place where they cannot have access to him. On their arrival the suspect should be mixed up with 8 or 10 men similarly dressed, and of the same religion and social status, and the identification carried out, whenever possible in the presence of a Magistrate or Sub-Registrar unconnected with the case, who should be asked to satisfy himself that the identification has been conducted under conditions excluding the possibility of collusion. Care must be taken that the identification by each witness is done out of sight or hearing of the other identifying witnesses.]

Date of conducting the identification.	Place where the identification is made.	Name of identifying witnesses with noteas to which suspects were identified by each witness.	Name of the suspects.	Place where the suspect was detained or kept before he was brought out for identification	Description of the manner in which the identification was effected.	Name of witnesses in whose presence the identification was made with their signature.	Remarks and signature of the Identification officer.
21. 9. 34.	Inside Panihaty Sub-jail	Witness X identified suspect A ,, Y identified B ,, Z identified K Witness Z also identified A & B.	A B K	In Sub-jail at Panihaty.	Mixed up with about 20 of almost same age, religion and status.	Witnesses X Y Z Signed X Y Z	*Nothing in particular for remarks.* Sd/- S. Ahmed. *Deputy Magistate.*

Charge Sheet **and** *Final Report* **required to be submitted by Investigating Police-officer.**—If the Investigating Police-officer is satisfied, after proper investigation, that an offence was committed and that the accused persons were implicated in the crime, the Police-officer has to submit a *Charge Sheet* to the Magistrate able to take cognizance of the case with a view to his taking action in the matter. If the Police-officer is of opinion that no offence was committed or that the offender cannot be traced, he is to submit a *Final Report* and the case will drop. Of Course, on subsequent information received the Police-officer, may resume the investigation and if satisfied, submit a *Charge Sheet* against the person or persons who, in his opinion, committed the offence. The particulars required to be entered in a *Charge Sheet* and a *Final Report*, under Section 173 Cr. P. C., will appear from the forms (*given below*) in which they are required to be submitted. There is no limit to the number of investigations which can be held regarding an offence[1]. In the case of *Lee v. H. L. Adhikari*, Jenkins, C. J. and Carnduff, J. *held* that a Police Report under Section 173 Cr. P. C. should set forth the nature of the information received against the accused. Where the Police Report, on which the Magistrate took cognizance of the case, did not set forth the nature of the offence against the accused, the proceeding was quashed[2].

N.B.—Form of the Charge Sheet is given on the next page.

1. *Dibakar v. Ramamurti*, 35 M.L.J 127, 19 Cr. L.J. 901.
2. 14 C.W.N. 304.

District.

Police Station

CHARGE SHEET. (*Form*)

CHARGE SHEET NO

First Information No.

Dated 193 .

Date fixed for trial 193 .

Name, address and occupation of complainant or informant and of the person on whose behalf the complaint is made.	Name and address of accused persons against whom charge is not proved whether arrested or not, if arrested, state whether released on bail or recognizance.	Name and address of accused persons (against whom *prima facie* case is made out.—how dealt.)			Property (including weapons found, with particulars of where, when and by whom found.	Name and address of persons, it is proposed to examine as witnesses and of other persons who appear to be acquainted with the circumstances of the case.	Charge or information, name of offence and circumstances connected with it in concise form and under what section of Law charged.
		Sent up in custody.	Sent up on bail or recognizance.	Absconding.			

On Reverse of Charge Sheet (form).—

1. I certify that I have carefully examined the Registers of persons committed (Village Criminal Note-books) and have in all other respects made a full enquiry whether the accused persons and absconders against whom the charge has been proved have given false names and addresses or have been previously convicted, and I find that

(*Here state the result*).

2. I also certify that the accused has resided in this jurisdiction for a period of more/less than........... years.

3. The accused's antecedents are as follows :—

(*Here state the history, if any*)

Sd/-..................

Signature of the Investigating-officer.

Certified that I have carefully searched the index to the 'Conviction Registers' and have found that ......

(*Here state the result*)

Sd/-..............

Signature of Court Officer.

Final Report Under Section 173 Cr. P. C. (*Form*)

FINAL REPORT NO......

District.........

Police Station......

First Information No......

Dated... ....193 .

Name and Address of complainant or informant.	Nature of charge or complaint.	Description and value of property stolen, if any.	Name and Address of accused person, if any.	If arrested date of arrest and hour of arrest.	Date and hour of release and whether on bail or on recognizance.	Property (including weapons) found with particulars of where, when and by whom found and whether forwarded to Magistrate.	Brief description of information or complaint, action taken by police with result and reasons of not proceeding further with investigation.

Despatched at...... A. M./P. M. on. ....193.

Signature of the Investigating Officer.

Arrest by Police.—A Police-officer can arrest a person during the investigation without any order from the Magistrate, and can also arrest any person under a 'warrant' issued by a Magistrate. The person arrested is not to be subjected to more restraint than is necessary to prevent his escape. The arrested person can be admitted to bail under certain circumstances, otherwise he must be produced before the Magistrate without unreasonable delay. The Police has powers under Section 51 Cr. P. C., to search the body of the arrested person. A Police-officer can also arrest a person without a warrant under the circumstances mentioned in Section 54 of the Criminal Procedure Code, *e.g.*, where the person is reported to be in possession of stolen property, house-breaking implements or the like, or if he is a *proclaimed* offender. The Police has to exercise its power of arrest without warrant very cautiously[1]. A Police-officer is punishable under section 220 I. P. C. if he arrests a person knowing that he is acting contrary to law.

There are some Special Acts, *e.g.*, the Indian Explosives Act IV of 1884, the Bengal Excise Act VII of 1878 etc., which empower a Police-officer to arrest a suspected person without a warrant.

An Officer in charge of a police station may also arrest a person who is, by repute, an habitual housebreaker or a thief or who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself or who tries to conceal himself for

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1. In re: *Charuchandra* 44 Cal. 76=20 C.W.N. 1233.

committing a cognizable offence. An Officer in charge of a police station may authorise his subordinate in writing, to arrest a person. Any private person may also arrest a person who, in his view, has committed a non-bail-able and cognizable offence. He is required forthwith to take him to the nearest police station. No person arrested can be detained for more than 24 hours[1].

DUTY OF THE PUBLIC.

Helping the Magistrate and the Police.—Every person is bound to assist a Police-officer reasonably demanding his aid, within or without the Presidency towns, for arresting any person, for prevention or suppression of a breach of the peace and for other purposes mentioned in Section 42 of the Criminal Procedure Code. It is the duty of the public to give information of heinous offences, mentioned in Section 44 of the Criminal Procedure Code, to the nearest Magistrate or Police-officer. Besides, the village headman, landholder, accountant and others are bound to report the commission of or any intention to commit any non-bailable offence, and of suspicious deaths and other matters mentioned in Section 45 of the Criminal Procedure Code.

Dispersion of Unlawful Assemblies.—An "Unlawful Assembly" has been defined in Section 141 I. P. C. A Magistrate has power to command any unlawful assembly to disperse and for enforcing his order

1. Section 61 of the Criminal Procedure Code.
2. *Ajij Shaik* v. *Emp.*, 40 Cal. 331.

may take help of the police or military force. No Magistrate is liable for *bonafide* acts done by him for dispersing an unlawful assembly.

Public Nuisances etc.—For temporary orders in urgent cases of 'nuisance' or 'apprehended danger' refer to "*Notes to Model Petitions, numbers 51, 52, in Part VIII.*

CHAPTER VIII.

PREVENTION OF OFFENCE.

PROCEEDINGS UNDER SECTIONS 145 & 147 Cr. P. Code.

145 and 147 Cr. P. C. Proceedings.—Where there is a dispute concerning land or water etc., likely to cause a breach of the peace, a Magistrate, under section 145 Cr. P. C., makes an order in writing, requiring the parties to attend his Court. The Magistrate considers the written statements filed by the parties, takes evidence and decides which party was in possession of the land or water etc., on the date the proceedings were started. If it appears that a party was in possession within two months of the proceedings, that party is considered to have been in possession. The Magistrate orders the party found to be in possession, to retain possession until legally evicted. The Magistrate may, in the circumstances mentioned in Sec. 146 Cr. P. C., attach the subject matter of the dispute pending the decision of a competent Court.

Generally the proceedings under Section 145 Cr. P. C. are started on Police Reports.

Police Report.—A Police Report is not evidence in a case under Sec. 145 Cr. P.C. but may be used by the Magistrate for taking actions[1]. The Magistrate may proceed on any information, or one of the parties may move him for initiating proceedings[2].

Where Magistrate can assume jurisdiction.—The Magistrate can assume jurisdiction where there is a likelihood of a breach of the peace, otherwise not[3]. The Magistrate should be satisfied, from a Police Report or on other information, that there is a likelihood of a breach of the peace. The mere fact that there is a dispute concerning land is not sufficient by itself to give the Magistrate jurisdiction[4].

Possession.—Possession referred to in Section 145 Cr. P. C., must be actual possession of the subject matter[5], and not occasional possession *e.g.*, holding *hát* on a particular day in a week[6]. The Magistrate cannot take action where the parties jointly claim possession. So a dispute as to the right to realize rent in respect of not the whole sixteen annas, but only of an undivided share in any landed property is not a dispute concerning tangible immoveable

1. In re : *Bhadreshwari*, 16 W. R. 17, 7B L. R. 329.
2. In re : *Kishoree Mohon*, 19 W. R. 10.
3. *Gobind* v. *Abdul Sayad* 6 Cal. 835.
   Sibnarayan v. *Satis*, 24 C. W. N. 621, 21 Cr. L. J. 593.
4. *Kulada Kinkar Roy* v. *Danesh*, 33 Cal. 33.
5. *Rajendra* v. *Md. Arzumand*, 9 C. W. N. 887.
6. *Nayan Manjari* v. *Fazley Haq*, 49. Cal. 871.

property within the meaning of Section 145 of the Criminal Procedure Code[1].

Subject matter of dispute.—This may be "land or water" which includes for the purpose of Section 145 Cr. P. C., the buildings, markets, fisheries, crops or other produce of land, and the rents or profits in respect of any such property[2].

Nature of Inquiry.—The inquiry should be only for the purpose of ascertaining the actual possession. The proceeding cannot be allowed to be converted into a civil suit[3].

The question of title need not be inquired into in detail[4]. The Magistrate may however incidentally look into title for deciding the question of possession.

Can a proceeding under Section 145 Cr. P. C. be referred to arbitration.—A case under Section 145 Cr. P. C. cannot be referred to arbitration[5].

Can a party after his failure in a 145 Cr. P. C. Proceeding bring a suit under Section 9 of the Specific Relief Act for recovery of possess? No. It is not open to an unsuccessful party in a proceeding under Section 145 Cr. P. C., to institute a suit under Section 9 of the Specific Relief Act for recovery of

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1. *Surb Narayan Singha* v. *Birj Mohon Thakur*, 23 Cal. 80. *Nritta Gopal* v. *Chandi Charan*, 10 C. W. N. 1088 (Debuttar case)
2. Section 145 Cr. P. C. (Clause 2).
3. *Kochai* v. *Rameschandra*, 35 Cal. 795.
4. *Arju Mia* v. *Arman Mia*, 7. C. L. J. 369.
5. *Banwari* v. *Hriday*, 32 Cal. 552.

possession upon the allegation that he was dispossessed as a result of the order of the Criminal Court[1].

Civil Court Decree.—It is the duty of the Magistrate, when the right to possession has been declared within a time not remote from his taking proceedings under Section 145 of the Criminal Procedure Code, to maintain an order which has been passed by any competent Court. He should not take up any proceedings which would have the effect of modifying or cancelling such an order. If he does so, he assumes a jurisdiction which the law does not contemplate[2].

Civil Suit after an order in a 145 Cr. P. C. Proceeding.—An unsuccessful party may bring a civil suit within 3 years from the date of the Magistrate's order.[3]

Attachment of property and appointment of *Receiver*.—If the Magistrate holds that none of the parties was in possession, or is unable to satisfy himself as to which of them was in possession of the subject-matter of dispute he may attach it. The attachment will subsist until a competent Court has decided the rights of the parties thereto, or determined the person entitled to possession thereof.

When the Magistrate attaches the subject-matter of dispute, he may, if he thinks fit, and if no *Receiver* of the property in dispute has been appointed by any Civil Court, appoint a *Receiver* thereof, who, subject

1. *L. Moore* v. *Monoranjan Guha*, 12. C. W. N. 696.
2. *Doulat Koer* v. *Rameshwari Koeri*, 26, Cal. 625 ; 3 C.W.N. 461.
3. Article 47. Indian Limitation Act. (*see Jogendra* v. *Brojendra*, 23 Cal. 731).

to the control of the Magistrate, shall have all the powers of a *Receiver* appointed under the Code of Civil Procedure"[1] The Magistrate can also pass orders for the management of the attached property[2].

Dispute concerning easement rights.—If there be a dispute likely to cause a breach of the peace regarding any alleged right of user of any land or water, the Magistrate can inquire into the matter and issue an order prohibiting any interference with the exercise of such right[3]; that is to say in case of a dispute regarding easement rights, the Magistrate can pass necessary order to prevent a breach of the peace as in a Proceeding under Section 145 Cr. P. C.

Costs.—The Magistrate has power to award costs to the successful party as in a civil case.

CHAPTER IX.

PROCLAMATION AND ATTACHMENT : WARRANT OF ARREST : SEARCH WARRANT, PRODUCTION OF DOCUMENTS, ETC.

Proclamation and Attachment.—If any Court has reason to believe that any person either, an accused or a witness, against whom *Warrant* has been issued, has absconded or is concealing himself, the Court can

1. Section 146 Cr. P. C.
2. *Lokenath* v. *Nedu*, 29 Cal. 382.
3. Section 147 Cr. P. C.

issue a *Proclamation* requiring his attendance at a specified place and at a specified time not less than 30 days from the date of publishing such *Proclamation.* The *Proclamation* is published by reading it out in some conspicuous place, affixing it in some conspicuous part of the house of the person and also by affixing it in some conspicuous part of the Court premises. *Failure to comply with the above formalities will vitiate the subsequent attachment and sale of the property of the person against whom Proclamation is issued*[1]. The person against whom a *Proclamation* is issued must appear before the Magistrate within 30 days, as required. He can allege and prove that the *Warrant* issued was not in order[2], and ask the Magistrate to withdraw the *Proclamation.*

The Court issuing the *Proclamation* may at any time order the attachment of any property, moveable or immoveable or both belonging to the proclaimed person and such attachment is effected in terms of Section 88 of the Criminal Procedure Code. A third person can prefer a '*claim*' to the attached property or file an objection to the attachment of the property. The Magistrate enquires into the '*claim*' or objection and passes necessary orders. The claimant, if aggrieved by the Magistrate's order, may, file a suit, within one year, in the Civil Court to establish his right to the property claimed.

If the proclaimed person appear within the time

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1. *Mianjan v. Abdul,* 27 All. 572.
2. *Queen Emp. v. Umesh,* 5 W. R. 71.

specified in the *Proclamation*, the Court can pass an order withdrawing the attachment. If the property be sold, the nett sale proceeds are kept in deposit in that Court. If the absconding person (accused or witness) subsequently appear and satisfy the Court that he did not abscond or conceal himself and that he had no notice of the Proclamation, the Court may make an order for the restoration of the property to that person. If the property had been sold the proceeds of the sale after deducting costs up to sale may be made over to such person. An order refusing the restoration of property under Section 89 of the Criminal Procedure Code can be appealed against.

Simultaneous issue of Warrant and Summons.—A Court may in its discretion issue a Warrant (*with or without bail*) in lieu of or in addition to a Summons (*in terms of Section 90 Cr. P. C.*) against an accused or a witness.

Release of accused or witness on furnishing security.—When the person for whose appearance or arrest a Magistrate issued a Summons or Warrant, appears in Court, the Magistrate may release him taking a *Bond* with or without sureties for his appearance. But such a person may be re-arrested on a breach of the terms of the bond.

Execution of the warrant of arrest issued by a Court.—A warrant of arrest issued by a Court against an accused or a witness may be executed by a Police-officer to whom it is sent for execution or by any other Police-officer whose name is endorsed on the warrant by the Officer to whom it was issued. A

warrant of arrest may be sent, outside the local limits of the jurisdiction of the Court, for execution.

Procedure for production of documents and movable properties and Discovery of person wrongfully confined.—A Court, or an officer incharge of a Police Station in any place beyond the limits of the towns of Calcutta and Bombay, may issue Summons for production of documents or other articles. The documents or things to be produced should be clearly specified on the Summons[1]. A Magistrate or a Police-officer can not call for production of a thing or a document unless such a document or a thing has some relation to or connection with the enquiry (by the Court) or investigation (by the Police)[2]. A summons can be issued, for production of an article or a document, on the accused and also on any person not a party to the proceeding or enquiry[3]. A Magistrate, instead of issuing a Summons, may, in his discretion, issue a Search Warrant under Section 96 Cr. P. C.

Under Section 95 Cr. P. C A District Magistrate a Chief Presidency Magistrate, High Court or a Court of Sessions may require the Postal authorities to deliver documents and parcels lying in their custody to such person as the Magistrate or Court directs.

Search Warrant.—The provision for issuing a *Search Warrant* is contained in Section 96 Cr. P. C. which is reproduced below :—

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1. Section 94 Cr. P. C. ; *Prankhan* v. *King Emp.*, 16 C. W. N. 1078.
2. *Nizam of Hydrabad* v. *A. M. Jacob*, 19 Cal. 52.
3. *Nizam of Hydrabad* v. *A. M. Jacob*, 19 Cal. 52.

(1) "When any Court has reason to believe that a person to whom a summons or order under Section 94, or a requisition under Section 95, Sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the Court to be in possession of any person,

or where the Court considers that the purpose of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained."

(2) "Nothing herein contained shall authorise any Magistrate other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities[1].

The issuing of a *search warrant* is a judicial act and the Magistrate has to weigh the circumstances carefully before issuing such a warrant. A mere statement, contained in an affidavit, disclosing the reason necessary for the search is not always sufficient[2]. A Police-officer executing a *search warrant* is to search for specific articles which have

1. Section 96 Cr. P. C.
2. *I. Chetty v. Jehangir* 18 Cr. L. J. 837.
Re : *Jagannath Agarwalla*, 24 C. W. N. 105.

been mentioned in the summons or warrant issued for such production[1]. The Court, in its discretion, may specify the particular place to which the search shall extend.

General Search.—A District Magistrate, a Sub-divisional Magistrate, a Presidency Magistrate or a Magistrate of the first Class upon information and after such inquiry as he thinks necessary, may issue a warrant to search a house supposed to contain stolen properties, forged documents, counterfeit coins, instruments for counterfeiting and other things mentioned in Section 98 Cr. P. C.

Discovery and release of persons wrongfully confined.—If any Presidency Magistrate, Magistrate of the 1st Class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances which may amount to an offence, he may issue a search warrant for production of the person confined[2]. There is no printed form for issuing a warrant under Section 100 Cr. P. C. But a form for issuing a warrant under section 96 Cr. P. C. may, with necessary alterations, be used[3].

Search : How to be conducted.—The Officer entrusted with the execution of a search warrant or a Police-officer searching a place, during an investigation, must call upon two or more respectable gentlemen of the locality to be present at the search and the search

1. *Pran Khan* v. *King Emp.*, 16 C. W. N. 1078.
2. Section 100 Cr. P. C.
3. *Legal Remembrancer* v. *Mojam Molla*, 45 Cal. 905, 20 Cr. L. J. 47.

should be made in their presence. A search list shewing the things found and the places in which they are found should be prepared and signed by the search witnesses and the searching officer. (*For form of search list see page 68*). The occupant of the place searched or some person on his behalf, has a right to attend the search and a copy of the search list prepared and signed by the witnesses must be delivered to such occupant or person at his request. It is obligatory on the searching officer to call on and get two or more respectable persons as search witnesses before entering the place to be searched. The witnesses selected should be respectable men of the locality who would be impartial and on whom *prima facie* reliance can be placed[1]. To avoid suspicion, a friend of the searching officer should not be selected to become a search witness[2]. Section 103 Cr. P. C. was enacted to do away with the objectionable practice of taking semi-professional search-witnesses from a greater distance. The Police, under Section 103 Cr. P. C. has power to compel the attendance of witnesses from the immediate vicinity.

Search List : Its value as evidence.—A search list, prepared in accordance with law, may be evidence to show the articles found and the place where they were found. Even though the law requires preparation of a search list, still evidence[3], other than the search

1. *Tiya v. Emp.*, 15 Cr. L. J. 441. (F.B).
2. *Ma Htaung v. Emp.*, 4 Burma L. J. 2, 26 Cr. L. J. 827.
3. *Salai Nayak v. Emp.*, 34 Mad. 349 (F. B).

list, regarding the articles found and the places where they were found may be adduced. But the value of such evidence is often very weak. If the search is made in the presence of only one witness there is no proper search according to law. A Police-officer may not be considered a satisfactory second witness to a search[1]. It is the duty of the prosecution to prove the search by summoning the search witnesses[2]. A search is irregular if conducted in violation of the police rules relating to the search; the effect of such an irregularity would necessitate a careful scrutiny[3]. The Court may consider, while judging the value of a search list, the practicability of tabulating and listing a very large number of articles at the spot, strictly according to the rules.[4] In other words, the irregularity in a search cannot render the evidence of the of search and discovery of articles, inadmissible but it makes the evidence as to search somewhat weak. [*See part V on Evidence—Chapter XVII.*]

A Magistrate may direct a search to be made in his presence.[5]

[*For search and restoration of abducted female—See Chapter XI. Page 95.*]

1. *Emp.*, v. *Balai Ghosh*, A. I. R. 1930 Cal. 141.
2. *Munni Sonar* v. *Emp.*, 9 C. W. N. 438.
3. *Ramesh* v. *Emp.*, 41 Cal. 350.
4. *Barindra Kumar* v. *Emp.*, 14 C. W. N. 1114.
5. Vide Section 105 Cr. P. C.

CHAPTER X.

TENDERING OF PARDON.

Tender of pardon to an accomplice.—Under Section 337 Cr. P.C., the District Magistrate or any Magistrate of the First Class may at any stage of an investigation (by the Police) or inquiry a (by the Magistrate) or at the time of trial of certain offences mentioned in the said section, with a view to obtaining the evidence of any person (including an accused) supposed to have been directly or indirectly concerned in or privy to the offence, tender him a pardon, on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or as abettor, in the commission there of. Where the offence is under investigation by the Police, the Magistrate (First Class) having jurisdiction to try the case can, with the sanction of the District Magistrate, tender a pardon. An accused after accepting a tender of pardon may be examined as a witness for the prosecution. The person, to whom pardon is tendered, has to be detained in custody until the termination of the trial. An accused, the prosecution against whom is withdrawn, may be examined as a witness for the Crown. The Local Government has no power to grant conditional pardon to an accused[1].

1. *Paban Singh* 10 C.W.N. 847.

An accomplice, if he is not an accused under trial in the same case, is a competent witness and may be examined on oath. The Magistrate, who tenders a pardon in an enquiry and who can not try the case himself is competent to commit the accused to the Court of Session for taking his trial[1].

Pardon by Sessions Court.—The Sessions Court may tender pardon or order the committing Magistrate or the District Magistrate to tender a pardon to an accused on the usual conditions[2].

Withdrawal of pardon.—If a person, after accepting a tender of pardon, fails to fullfil its conditions by concealing important matters or by refusing to give evidence and the Public Prosecutor certifies to that effect, the pardon may be forfeited and the person tried in respect of the offence committed by him. But such a person cannot be tried jointly with any of the other accused. The statement made by such person before a Magistrate may be given in evidence against him at the trial.

Prosecution of the person who fails to fulfil the conditions of the perdon.—The person (*Approver*) who has forfeited a pardon tendered cannot be prosecuted for the offence of giving false evidence without the sanction of the High Court[3]. He can take a plea in defence that he fulfilled the conditions on which he had

1. *E.* v. *Pteru* 26 Cr. L.J. 1216. Read Sub-sec. 2 (A) of Sec. 337 Cr. P. C.

2. Sec. 338 Cr. P. C.

3. Sec. 339 Cr. P. C.

obtained pardon. In the case of *Emperor* v. *Kothia*[1] the approver was one of the several persons accused of murder. He accepted a tender of pardon made to him by the committing Magistrate on the conditions set fourth in Sec. 337 Cr. P. C., and was examined as witness for the Court before the committing Magistrate and he made a full and true disclosure of the whole of the circumstances within his knowledge relating to such offence. He repeated them in his *Examination-in-chief* before the Sessions Judge, but resiled from his statement in *Cross-examination.* At the conclusion of the trial, the Sessions Judge directed the committing Magistrate to withdraw the pardon. The Magistrate withdrew the pardon and committed the accused to the Sessions, where he was convicted, *held,* that, the pardon granted to the accused could not have been withdrawn and he should not have been committed to the Sessions. The jury is to consider in a case like the above whether or not the accused had complied with the conditions of the pardon and if the jury think that he had so complied, the accused is entitled to be acquitted, but there should be a clear finding on this point.

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1. 30 Bom. 611 : Read in this connection *Emperor* v. *Jagannath* 27 Cr. L. J. 768.

CHAPTER XI.

RESTORATION OF ABDUCTED FEMALE SEARCH.

Restoration of an abducted female.—Upon complaint, made to a Presidency Magistrate or District Magistrate on oath, of the abduction or unlawful detention of a woman, or of a female child under the age of sixteen years, for any unlawful purpose, he may make an order for searching any place and for the immediate restoration of such woman to her liberty or of such female child to her husband, parent, guardian, or other person having the lawful charge of such female child and may compel compliance with such order[1]. If a father detain a girl against the will of her husband, action cannot be taken under Section 552, unless the girl herself objects to such a detention[2].

N. B. For other searches—See Chapter IX. Pages 87 to 91.

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1. **Section 552 Cr. P. C.**
2. ***Nathu* v. *Nari Lal* 15 Cr. L. J. 712.**

PART II.

Practice and Procedure (Contd.)

SECURITY & OTHER PROCEEDINGS, TRIAL, LIMITATION ETC.

PART II.

CHAPTER I.

SECURITY PROCEEDINGS.

When security may be required from an accused after his conviction.—Whenever any person accused of any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under Section 143, Section 149, Section 153-A or Section 154 thereof or of assault or other offence involving a breach of the peace or of abetting the same or any person accused of committing criminal intimidation, is convicted of such offence before a High Court or a Court of Sessions or the Court of Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the First Class, and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, such Court may, at the time of passing sentence on such person order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, *not exceeding three years*, as it thinks fit to fix [1]

Where order can be made and where not.—It is necessary, before an order under Section 106 of the Criminal Procedure Code can be made, that the accused should have an opportunity of answering to an

1. Section 106 Cr. P. C.

accusation for an offence of the kind, upon a conviction, for which such an order can be made[1]. Section 106 cannot be applied to a case where there is only a possible apprehension of a future breach of the peace[2].

If the conviction is set aside on appeal, the order for security falls through. The Magistrate is bound to record a punishment according to law and then if he thinks fit, can make an order for furnishing security[3].

Security to be reasonable.—The amount of the security should be reasonable. The Magistrate ordered the accused to execute a bond for Rs. 500 to keep good beheaviour for one year and to furnish two sureties for the like amount The accused failed to furnish the required security and was sent to the prison. The High Court being of the opinion that the amount of the security required was excessive, and that the Magistrate had not exercised proper discretion in the matter, interfered in the exercise of its revisional jurisdiction and reduced the amount.[4]

Powers of Appellate Court.—The Appellate Court can direct security to be taken. It can while maintaining the sentence cancel the order as to the security[5].

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1. *Subal Chandra Dey* v. *Ram Kanai Sanyasi*, 25 Cal. 628.
2. *Q.* v. *Harakumari*, 24 W. R. (Cr) 10.
3. *Crown* v. *Nura*, 1901 P. R. 10 (Cr.)
4. *Queen* v. *Rama*, 16 Bom. 372.
5. *Abdul* v. *Amiran*, 30 Cal. 101.

Furnishing of security when there is likelihood of a breach of the peace.—Whenever a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or Magistrate of the First Class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity or do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the Magistrate, if in his opinion there is sufficient ground for proceeding, may require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, *not exceeding one year*, as the Magistrate thinks fit to fix[1].

The object of Section 107 Cr. P. C., is to prevent a future breach of the peace and not to punish a person for his past act[2]. It is incumbent on the Magistrate, before taking a bond from a person for the preservation of the peace, to adjudicate judically on the evidence given before him as to the necessity of taking security. The *onus* in such a case is on the party on whose complaint the notice is issued[3].

The petitioner was the leader of a movement known as the *Satyagraha* movement, the object of which was to enforce the right of the Hindus to lead processions with music before mosques on public highways at all times. After he had led several such processions, an

1. Sec. 107, Cr. P. C.
2. *Sreekanta* v. *Emp.*, 9 C. W. N. 898.
3. *A. D. Dunne* v. *Hemchandra Chowdhury*, 12 W. R. 60.

order under Section 144 Cr. P. C., was made prohibiting any such procession on the day of an ensuing Hindu festival. The petitioner was sent for by the Superintendent of Police and in his presence, he told the District Magistrate that he would not desist from leading processions on any ground. The petitioner was arrested and proceedings under Section 107 Cr. P. C., were taken against him and an order for security was made. While the petitioner was in custody, a procession with music was led but a breach of the peace was averted by the presence of the Police. It was *held* that if a person himself is likely to commit a breach of the peace he may be dealt with under Section 107 Cr. P. C, and if for any wrongful act on his part other persons would do things which might probably occasion a breach of the peace or disturb the public tranquility, he would become equally amenable to the provisions of the Section[1].

Land Dispute.—Proceedings under Section 107 Cr. P. C., cannot be drawn up in a case of *bonafide* land dispute. The Court in such a case has to draw up proceedings under Section 145 Cr. P. C[2]. A person exercising lawful rights cannot be dealt with under Section 107. Cr. P. C[3]. The Magistrate, in a proceeding under Section 107 Cr. P. C., should write out a judgment supported by the evidence on the record.

Whether the Person proceeded against is an accused?—Some High Courts say that the person

1. *Satindra Nath Sen Gupta* v. *King Emp.*, 32 C. W. N. 477.
2. *Driver* v. *Q. Emp.*, 25. Cal. 798. [*Read* 32 Cr. L. J. 1014(2).]
3. *Din Dayal* v. *Emp.*, 34 Cal. 935. (*Read* 9 Luck 651)

proceeded against is an accused. Other High Courts have taken a contrary view[1].

Security from person disseminating seditious Matter.—Security can be taken from such a person for his good behaviour for a period not exceeding one year[2].

Security from suspected persons and persons who have no means of livelihood.—Security for good beheaviour from such a person can be taken for a period not exceeding one year[3].

A person without employment.—In these days of unemployment if a person is unable to prove the source of his livelihood, he ought not to be ordered to execute a bond under Sections 109(b) and 118 Cr. P. C., unless there is reasonable ground for suspecting that he is sustaining himself by dishonest means[4].

Bad livelihood cases.—(*Sec. 110, Cr. P. C.*)—Whenever a Presidency Magistrate, District Magistate, Sub-divisional Magistrate or a Magistrate of the First. Class specially empowered in this behalf by the Local Government, receives information that any person within the local limits of his jurisdiction :—

(a) is by habit a robber, house-breaker, thief or forger ; or

1. *Desikachari* v. *Emp* , 39 Mad. 539 ; *Hopcroft* v. *Emp* , 36 Cal. 163 ; *Md. Khan* v. *Emp.*, 1905, P. R. 42 ; *Q. E.* v. *Iman Mondal.* 27 Cal. 662.
2. Sec. 108 Cr. P. C.
3. Sec. 109 Cr. P. C.
4. *Victor* v. *K. Emp.*, 30 C.W N. 380 : 53 Cal. 345.

(b) is by habit a receiver of stolen property knowing the same to have been stolen ; or

(c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property ; or

(d) habitually commits or attempts to commit or abets the commission of the offence of kidnapping, abduction, extortion or cheating or mischief or any offence punishable under Chapter XII of the Indian Penal Code or under Section 489-A, Section 489-B, Section 489-C, or Section 489-D of that Code ; or

(e) habitually commits or attempts to commit, or abets the commission of offences involving a breach of the peace ; or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may require such persons to show cause why he should not be ordered to execute a bond, with sureties for his good behaviour for such period, *not exceeding three years*, as the Magistrate thinks fit to fix[1].

Scope —The section is preventive and not punitive. Offences involving a breach of the peace mean offences of which a breach of the peace is an ingredient. Persons cannot be bound down under Section 110, Cl. (e) of the Criminal Procedure Code, unless they are found to have habitually committed or attempted to commit or abetted the commission of such offences[2].

1. Section 110 Cr. P. C.
2. *Kaliprasanna Roy Chowdhury* v. *Emp.*, 15 C.W.N. 366.

Party faction.—*Per* Chatterjee, J.: It is notorious that accusations under this section are constantly made with the object of blackening an enemy's character and of satisfying feelings of spite and hatred and a Magistrate cannot be too cautious in making sure that provisions intended for securing the peace of the community are not utilised for wreaking vengeance under the ægis of a Crown Prosecution (*15 C.W.N. 366. supra*)

Nature of Evidence required.—Mere association with men of bad character is not enough for drawing up a proceeding under Section 110[1]. To prove a charge under Section 110 it must be shown that a person is by habit a thief and a dacoit or that he is so desperate and dangerous as to render his being at large without security hazardous to the community, and there should be proof of specific acts showing that to the knowledge of some particular individual, he is a dangerous or desperate character.

It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character, when they themselves have no personal knowledge of or acquaintance with him. Such evidence is not only such as could not be safely acted upon, but is also likely to work serious prejudice[2]. Proceedings under Section 110 Cr. P. C., ought not to be instituted with a view to bind down a person on an indefinite charge, after prosecution

1. *Nikamal* v. *Emp.*, 6 C.L.J. 711; 6 Cr. L.J. 403.
2. *Kali Halder* v. *Emp.*, 29 Cal. 779.

against him on definite charges under the Penal Code failed.

Persons ought not to be bound down under Section 110 Cr. P. C., upon the mere statements of witnesses that they suspect or are under the impression that the persons proceeded against are thieves or dacoits, when no fact is mentioned to indicate that there is sufficient reason for their suspicion or impression.

Evidence of general repute is admissible[1]. But mere rumour is not repute. Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a different thing. A man's general reputation is the reputation which he bears in the place where he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of good character. On the other hand if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character[2].

PROCEDURE.

Initiation of security proceedings : Contents of order calling for securities.—When a Magistrate acting

1. Sec. 117 Cl.(4) Cr. P. C. Re Satgur 1933 A. L. J. 927.
2. *Isri Prosad* v. *Q. Emp.*, 23 Cal. 621.

under Section 107, Section 108, Section 109, or Section 110 deems it necessary to require any person to show cause under such section, he makes an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character, and class of sureties (if any) required[1].

A second proceeding.—The petitioner was imprisoned for one year on failure to furnish security for his good behaviour under Section 110 of the Criminal Procedure Code. About fifteen months after his release from jail fresh proceedings of the same nature were started against him and he was again ordered to furnish security to be of good behaviour—*held* that the second proceedings were bad in law[2]. If the person was discharged in the previous proceedings, a second proceedings cannot be started shortly afterwards[3].

Object of taking security.—The object of enabling a Magistrate to take security for good beheaviour is for the prevention and not for the punishment of offence.

Can a Magistrate curtail the number of the witnesses to be examined by the defence.—In a proceeding under Section 110 Cr. P. C., the trying Magistrate declined to examine, on behalf of the defence, more than the same number of witnesses as were examined

1. Sec. 112, Cr. P. C.
2. *Junab Ali* v. *Emp.*, 31 Cal. 783.
3. *Shakur* v. *Emp.*, 26 O. C. 242.

for the prosecution and relied on the confession of one of the petitioners who implicated himself with two other petitioners in a case of dacoity—held by the Calcutta High Court—that it is not open to the trying Magistrate to put such an arbitrary limit to the number of witnesses whose evidence the defence desires to adduce[1]. But the Allahabad High Court is of opinion that the Magistrate can curtail the number when it appears that there are unnecessarily large number of witnesses[2].

Interference by the High Court—The High Court does not, in ordinary cases, interfere with the proceedings under Section 110 Cr. P. C. Whenever it is established conclusively, either by direct evidence or by evidence of surrounding circumstances, that the proceedings are not *bona fide* and their continuance would in substance, mean an abuse of the statutary provisions on the subject, it is not only competent to the High Court but it is its obvious duty to interfere and quash the proceedings[3].

Nature of suretis.—The object of requiring 'security to be of good behaviour' is, not to obtain money for the Crown by the forfeiture of recognizances, but to insure that the particular person be of good behaviour during the time mentioned in the 'order'. It is,

1. *Amirulla Paramanik* v. *K. Emp.*, 22 C. W. N. 408=20 Cr. L. J. 201.
2. *Emp.* v. *Angnu Singh*, 45 All. 109.
3. *Rajendra Narayan Singh* v. *Emp.*, 17 C. W. N. 235.

therefore, reasonable to expect that the sureties to be tendered should not be persons belonging to such a distance as would make it unlikely for them to exercise any control over the man for whom they are willing to stand surety[1]. In a Calcutta case it was *held* that a Magistrate has no right to impose an arbitrary condition, *e.g.*, a condition requiring the accused to furnish two sureties and that they should be persons of respectability and substance, not related to him, and residing within one mile of his house. The ground on which a Magistrate has power to refuse to accept any surety must be a valid and reasonable one[2].

The accused must know the definite charge against him.—The words "substance of the information" in Section 112 of the Criminal Procedure Code, mean such or so much of the information as would enable the party to know under what clause of Section 110 he is charged or to what particular class of offenders he is said to belong[3].

Where warrant can be issued.—In ordinary cases the Magistrate should issue summons requiring the person to appear, but whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate) that there is reason to fear the

1. *Q. Emp.*, v. *Rahim Baksh*, 20 All. 206 = 18 A. W. N. (1898) 21.
2. In the matter of *Narayan Sooboddhee* 22 W. R. 37.
3. *Bhutnath Ghosh* v. *K. Emp.*, 33 C. W. N. 852.

commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest[1]. In ordering the arrest of a person under Section 114 of the Criminal Procedure Code, the Magistrate must act on the recorded information; it is not enough for him to express a belief that such a course is necessary. Not only must he have "reason to fear the commission of a breach of the peace" but also that "such a breach of the peace cannot be prevented otherwise than by the immediate arrest of such person[2]"; in other cases he cannot issue a warrant.

Appearance by a Pleader.—The Magistrate may dispense with the attendance of any person called upon to show cause in a proceeding under Section 110 Cr. P. C., and may permit him to appear by a pleader[3].

Nature of the inquiry by the Magistrate.—The Magistrate shall proceed to inquire into the truth of the information upon which preliminary steps were taken. He is also to take such further evidence as may appear necessary.

In an inquiry made in a 'proceeding' for security for keeping the peace evidence is recorded as in Summons cases. Where the order requires security for good behaviour, the enquiry and

1. Section 114, Cr. P. C.
2. *Q. Emp.*, v. *Babua*, 6 All. 132; 3 A. W. N. (1883) 260.
3. Section 116, Cr. P. C.

recording of evidence shall be in the manner prescribed for conducting trials in Warrant cases, except that no charge need be framed[1].

The inquiry is generally held in or nearabout the place where the accused and the persons on whose information the proceedings might have been started, reside. This is done to give the parties facility for bringing their witnesses. The accused should apply for summons on his witnesses at the earliest opportunity[2]. The Magistrate cannot hold the enquiry outside the local limits of his jurisdiction[3].

Joint trial of two or more persons.—Where two or more persons have been associated together in the matter under enquiry, they may be dealt with in the same or separate inquiries as the Magistrate may think just[4]. Where a joint enquiry is held against several persons, who are called upon to furnish security to keep the peace under Section 107, of the Criminal Procedure Code, there must be a specific finding against each person of acts rendering him individually liable under the section before an order can be passed binding him down[5].

Nature of proof required.—In an enquiry under Section 117, the nature or quantum of evidence need not be so conclusive as is necessary in trials of

1. Section 117, Cr. P. C.
2. *Q.* v. *Cheyt Singh*, 22 W. R. 79.
3. *Sonaram* v. *K. E.*, 3 C. L. J. 195 ; 3 Cr. L. J. 246.
4. Section 117, Cr. P. C., Paragraph 5.
5. *Ajodhya Prosad Singh* v. *Emp.*, 35 Cal. 920 = 12 C. W. N. 992 = 8 Cr. L. J. 207.

offences[1]. The Magistrate cannot proceed purely upon an apprehension of a breach of the peace, but is bound to see that substantial grounds for such an apprehension are established by proof of facts which would lead to the conclusion that an order for furnishing security is necessary. What the nature of the facts should be, depends upon the circumstances of each case, but, where the nature of the information of the Magistrate requires it, overt acts must be proved before an order under Section 118 can be made. Such an order cannot be passed against any person simply on the ground that another is likely to commit a breach of the peace[1]

Final order.—If, upon enquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the enquiry is made, should execute a bond with or without sureties, the Magistrate shall make an order accordingly. But no person shall be ordered to give security of a nature different from or of an amount larger than, or for a period longer than, that specified in the preliminary order asking to show cause, under Section 112 Cr. P. C. Besides, the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive. When the person in respect of whom the enquiry is made is a minor, the bond shall be executed by his sureties[2].

1. *Q. Emp., v. Abdul Kadir*, 9 All. 452=7 A. W. N. 111=11 Ind. Jur. 467.
2. Read Section 118, Cr. P. C.

Security demanded should not be excessive.—If the amount be excessive, the High Court may quash the order[1]. A Magistrate ordered the accused to execute a bond for a heavy sum for keeping good behaviour for one year and to furnish two sureties for the like amount. The accused failed to furnish the required security, and was sent to the prison. The High Court, *held* that the amount of the security required was excessive, and that the Magistrate had not exercised proper discretion in the matter. The amount of the security was reduced[2]. (*See page 100*).

Power to reject sureties.—The Magistrate can hold an enquiry and take evidence on oath and decide the fitness or otherwise of the sureties. It is not open to the Sessions Judge exercising jurisdiction u/s 123 to accept or reject sureties[3]. There are cases where pecuniary fitness was considered sufficient[4]. (*See page 109.*)

Cases where security is not furnished.—The Magistrate can, in such a case, order the person to be detained in prison until the period for which security was demanded expires, or till security is furnished.

When security is for a period exceeding one year.—Reference should be made by the Magistrate to the Sessions Judge (in case of a Presidency Magistrate —to the High Court) for examining the proceedings

1. In the matter of *Juggut Chandra Chuckerbertty*, 2 Cal. 110.
2. *Q. Emp.* v. *Rama*, 16 Bom. 372.
3. Re *Parbati*—61 Cal. 588.
4. *Emp.* v. *Md. Baksh*, 26 O. C. 284 ; In *Ram Pershad* v. *K. E.*, 6 C. W. N. 593 ; *Kalu Mirza* v. *Emp.*, 37 Cal. 91.

and for passing necessary orders. The Sessions Judge will issue a notice on the accused and hear him or his pleader and pass such orders as the circumstances of the case may demand[1].

Special revisional powers of District Magistrate and Presidency Magistrate in Security Proceedings.—If they think that any person imprisoned for failing to give security may be released without hazard to the community or to any other person, they may order such person to be discharged[2]. These Magistrates can also, at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour[3]. The District Magistrate is not an appellate or revisional authority. The Patna High Court is of opinion that the Magistrate can vacate the order only on the ground that there is no longer any likelihood of a breach of the peace[4]. But the Calcutta High Court, in the Full Bench case of *Nabu Saddar* v. *Emp.*, *held* that a District Magistrate has powers under Section 125 of the Code of Criminal Procedure, to direct the cancellation of a bond to keep the peace, on grounds other than that the bond is no longer necessary[5]. The Calcutta view has been adopted by other High Courts.

1. *Emp.* v. *Girand*, 25 All. 375.
   Emp. v. *Amir Bala*, 35 Bom. 271.
   Section 123 Cr. P. C.
2. Section 124 Cr. P. C.
3. Section 125 Cr. P. C.
4. *Durga Singh* v. *Amar Dayal*, 28. Cr. L. J. 281. (Pat).
5. *Nabu Sardar* v. *Emp.*, 34 Cal. 1 F. B.

Discharge of surety.—A surety may be discharged on his application and the accused may be called upon to find another surety, and, in default, the accused may be imprisoned for the unexpired term of the bond[1].

CHAPTER II

PETITION OF COMPLAINT : ISSUE OF PROCESS.

Duty of Magistrate when a petition of complaint is filed.—A Magistrate, taking cognizance of an offence on complaint, has to examine the complainant upon oath. A joint complaint is not contemplated by the Code[2]. The substance of the examination is reduced to writing and signed by the complainant and the Magistrate.

When a complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties, examination of the complainant is not necessary.

When the case has been transferred under Section 192 Cr. P. C., and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred is not required to re-examine the complainant[3].

Signing of the petition of complaint.—The petition of complaint is required to be signed by the com-

1. Section 126-A Cr. P. C.
2. *Sasadhar* v. *Tegart*, 35 C. W. N. 782 ; A. I. R. 1931 Cal. 646.
3. Section 200 Cr. P. C.

plainant; otherwise, the Magistrate may refuse to accept it[1].

If a Magistrate fail to examine a complainant.—Such an irregularity cannot be cured by Section 537 Cr. P. C. The Magistrate has no powers to summon the accused without examining the complainant[2].

Where the Magistrate cannot take cognizance of the case.—If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he has to return the complaint for presentation to the proper Court with an endorsement to that effect.

Investigation or enquiry before issuing process against accused.—Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under Section 192 Cr. P. C, may, if he thinks fit for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and either enquire into the case himself or if he is a Magistrate other than the Magistrate of the Third Class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a Police-officer or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint[3]. A Magistrate, who does not take cognizance of a case on a police

1 & 2. *Abhoyeswari* v. *Kishori Mohan*, 42 Cal. 19. *contra*, *Baldiwa* v. *Emp.*, 57 All. 33 = A. I. R. 1933 All. 816.

3. Section 202 Cr. P. C.

report, cannot act under Section 202 and direct a subordinate Magistrate to hold a local inquiry[1].

Where a Magistrate should order local investigation under Section 202 Cr. P. C. before issuing process against a person accused of an offence.—The definition of "complaint" in Section 4 (h) does not contain any limitation that the person lodging the complaint must have personal knowledge of the facts of the case. If a complainant is not speaking from personal knowledge about the facts of the case, the Magistrate ordinarily orders an inquiry[2]. In a case of boundary dispute the Magistrate should direct local investigation[3].

Nature of Investigation.—In the case of *Debi Baux* v. *Jutmal*[4], Mitra and Holmwood, JJ. *observed* that "there is nothing in Section 202 to prevent an Investigating officer from making a full inquiry by obtaining information from the complainant and his witnesses and from the defendant and his witnesses, if any".

The Calcutta High Court is of opinion that the local investigation held by a subordinate Magistrate is a judicial proceeding within the meaning of Section 4[5]. But the Madras High Court has taken a different view[6].

Whether an accused can be present at the time of local inquiry or investigation under Section 202 Cr. P.C. ?—When the Magistrate caused notice to be

1. *Abdulla* v. *Emp.*, 40 Cal. 854.
2. *Sukumar Chatterjee* v. *Mofixuddin*, 25 C. W. N. 357.
3. *Baijnath* v *Rajaram*, 10 A. L. J. 79 ; 13 Cr. L. J. 704.
4. 33 Cal. 1282=5 Cr. L. J. 83.
5. *Kanchan* v. *Ramkrishna*, 36 Cal. 72.
6. *Kachi Madar* v. *Emp.*, 21 M. L. J. 795 ; 12 Cr. L. J. 323.

served upon a person named as an accused in a petition of complaint and directed him to show cause why process should not be issued against him, and on such cause being shown by a pleader on his behalf, dismissed the complaint against him, *held* that the procedure adopted was improper and was not in accordance with law[1]. According to the Calcutta High Court an accused person has no *locus standi* to appear or to be represented by a lawyer, before the issue of process against him[1] but that he may simply watch the proceedings and his pleader may act as *amicus curiae*[2].

The Bombay and the Oudh High Courts, however, are of opinion that the accused may be permitted to attend the inquiry and say what he has to say. He can also produce documentary evidence to show his innocence[3].

Dismissal of complaint.—The Magistrate, before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under Section 202, there is in his judgment, no sufficient ground for proceeding with the case. A Magistrate cannot dismiss a complaint under Section 203 Cr. P. C. until he has examined the complainant

1. *Chandi Charan Mitra* v. *Manindra Chandra Roy Chowdhury*, 27 C. W. N. 196.
2. *Sheikh Akbar* v. *Prance*, 12 Cr. L. J. 207 (Cal.) *See* re : *Bhimlal*. 40 Cal. 444 and *Vardar* v. *Hearsy*, A. I. R. 1934 Rang. 167.
3. In re : *Virbhan*, 52 Bom. 448 ; 30 Bom. L. R. 642. *Gobardhan* v. *Emp*, A. I. R. 1934 Oudh 372.

to see whether there is *prima facie* evidence of a criminal offence. In exercising his discretion under Section 203 Cr. P. C., the Magistrate ought not to allow himself to be influenced by a consideration of the motive by which the complainant may have been actuated in moving in the matter or by any other consideration outside the facts which are adduced by the complainant in support of his complaint[1].

Dismissal of complaint : Rehearing.—In the opinion of the Madras High Court, dismissal of a complaint under Section 203 of the Code of Criminal Procedure does not operate as a bar to the rehearing of the same or a fresh complaint by the same Magistrate, even when such an order of dismissal has not been set aside by a competent authority[2].

The Allahabad High Court adopted the Madras view[3]. The Calcutta High Court, took a contrary view in an earlier case of *Kamal Chandra* v. *Gour Chand*[4] but subsequently adopted the Madras view.

Issue of Summons and Warrant against accused.—If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should be issued at the first instance, he shall issue

1. In re *Ganesh*, 13 Bom. 590. F.B.
2. *Emp.* v. *Chinna*, 29 Mad. 126 F. B.=1 M. L. J. 31=3 Cr. L. J. 274=16 M. L. J. 79. *Q. E.* v. *Dolegovind*, 28 Cal. 211. Re *Ponnuswmi* 55 Mad. 622.
3. *Jaswa* v. *Emp.*, 21 A. L. J. 215.
4. 24 Cal 286. But see *Q. E.* v. *Dolegovind*, 28 Cal. 211.

summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should be issued at the first instance, he may issue a warrant, or if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate. (Sec. 204 Cr. P. C.).

Non-payment of process-fees for summoning the accused.—When, by any law for the time being in force, any process-fees or other fees are payable, no process is issued until the fees are paid, and if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint[1].

Magistrate's discretion in issuing processes against accused.—Under the Code of Criminal Procedure, a wide discretion is given to the Magistrate with respect to the grant or refusal of process as in the interest of the community it is essential that the Magistrate should be vested with an ample discretion in this matter.

In India, where the *Grand Jury* system does not exist as an additional shield to innocent persons against whom unfounded complaints are laid in a Criminal Court, it is especially necessary that caution and discretion should be used in issuing process. An accused person ought not to be dragged off to answer a charge merely because a complaint has been lodged against him.

The Magistrate's discretion must, however, be

1. Section 204 Cr. P. C.

exercised judicially and if after carrying out the instructions contained in the Code of Criminal Procedure, he is of opinion, upon the materials before him that a *prima facie* case has been made out, he ought to issue process and in such circumstances he is not entitled to refuse to issue process merely because he thinks that it is unlikely that the proceedings will result in a conviction[1].

Maintenance Case : Non-payment of process fees.—An application for maintenance under the Criminal Procedure Code, Section 488, should not be dismissed, on the failure on the part of the applicant, to comply with an order for payment of process fees[2].

Appearance of the accused by pleader : pardanashin lady.—Whenever a Magistrate issues a summons, he may, if he sees reasons to do so, dispense with the personal attendance of the accused, and permit him to appear by his pleader[3]. Where a Magistrate issues summons to a *Pardanashin* lady, alleged to be of good position, who is accused of an offence, the Magistrate should dispense with her personal attendance and permit her to appear by a pleader, until such time as he has before him clear, direct, and reliable *prima facie* proof that the accused has a real charge to answer[4].

1. *Subal Chandra* v. *Ahadulla*, 53 Cal. 606 ; 30 C. W. N. 546 ; 27 Cr. L. J. 788.
2. In re *Ponnammal*, 16 Mad. 234=2 Weir 252 ; and *Q. Emp.* v. *Golam Hossain Chowdhury*, 7 W. R. Cr. 10.
3. Section 205 Cr. P. C. *Jafar* v. *Cassum*, A.I.R. 1934 Bom. 212.
4. In the matter of *Rahim Bibi*, 6 All. 59=3 A. W. N. (1883) 207.

CHAPTER III.

PLACE OF INQUIRY AND TRIAL.
INITIATION OF PROCEEDINGS.

Inquiry and Trial: Place.—Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed[1].

An accused may be tried in a District where an act is done or where its consequences ensue; *e. g.*, if a man is wounded within the jurisdiction of "X" Court and subsequently dies within the jurisdiction of "Y" Court, the accused may be tried either by the Court "X" or by the Court "Y".

Where an act, done within the jurisdiction of "X" Court, is an offence by reason of its relation to any other offence committed within the jurisdiction of "Y" Court, as in conspiracy cases, the case may be tried by either "X" or by "Y" Court.

The offence of theft or any offence which includes theft or the possession of stolen property may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any other person who received or retained the same knowing or having reason to believe it to be stolen.

1. Read Sections 177 to 183 Cr. P. C. (For trial see pages 131-143).

The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted, was kidnapped or abducted or was conveyed or concealed or detained.

Where the scene of occurrence is uncertain or where the offence is a continuing one and consists of several acts, done in different local areas the case may be tried by a Court having jurisdiction over anyone of such areas.

If an offence is committed in a journey, the offence may be tried by any Court through whose jurisdiction the offender or the person against whom the offence was committed passed.

Initiation of proceedings : Taking cognizance of a case.—Any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence ;

(b) upon a report in writing of such facts made by any Police-officer ;

(c) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion that such offence has been committed[1].

Claim of accused for trial by another Magistrate.—When a Magistrate takes cognizance of a case on his

1. Section 190 Cr. P. C.

own knowledge or from information received from any person who does not disclose his identity, the accused can claim to be tried before another Magistrate[1].

Transfer of Case.—Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him[2]. A case should ordinarily be transferred before the hearing begins[3].

Transfer of part-heard case.—Where after several witnesses were examined by the Court, the case was transferred to another Court and the latter Court convicted the accused on evidence partly recorded by it and partly by the former Magistrate, *held* the trial was irregular. Section 350 of the Criminal Procedure Code is not applicable to such a case, and the irregularity cannot be waived by the accused[4].

Where cognizance of a case cannot be taken by Court without the complaint in writing of a public servant or by a Court.—The law on the subject is to be found in Sections 195 and 476 Cr. P. C. Section 476 must be read subject to the restrictions contained in Section 195-b[5]. Before the passing of the Act XVIII of 1923, sanction could be granted by a Court to a private party for

1. *Emp.* v. *Shewak Ram*, 15 Cr. L. J. 369 and Section 191 Cr. P. C.
2. Section 192 Cr. P. C. Public Pros. v. Shanmuga, 57 Mad. 827. (Part-head case transferred).
3. *Mozaffar Ali* v. *Emp.*, 50 Cal. 223.
4. *Teacotta* v. *Ameer Maji*, 8 Cal. 393.
5. *Jadu Nandan* v. *Emp.*, 37 Cal. 250=10 C. L. J. 564=14 C. W. N. 390=11 Cr. L. J. 37.

prosecuting an offender, but since 1st September, 1923 the Court itself has to make a complaint. This has been done to save a person from malicious prosecution by his opponent. The important portion of Section 195 Cr. P. C is reproduced below:—

"No Court shall take cognizance

(a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code, except * * * on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate; (b) of any offence punishable under any of the following sections of the same Code, namely Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in or in relation to any proceeding in any Court, except * * * on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or (c) any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code when such offence is alleged to have been committed by a party to any proceeding in any Court, in respect of a document produced or given in evidence in such proceeding except on the complaint in writing of such Court or of some other Court to which such Court is subordinate".

Where prosecution may be ordered.—Ordinarily a complaint is not made by a Court unless there is reasonable ground for supposing that the case will end in a conviction[1].

1. In re: *Paree Kunhammed*, 26 Mad. 116.

In a case of perjury, the witness should be given an opportunity to explain under what circumstances he made the alleged false statements[1].

N. B. (Read Part II Chapter XI—Re: Offences relating to the Administration of Justice).

Withdrawal of complaint.—Where a complaint has been made under Sub-section 1, Clause (a) of Section 195 Cr. P. C, by a public servant any authority to which such public servant is subordinate may order the withdrawal of the complaint.

Government sanction where necessary for prosecution.—(1) A case of "criminal conspiracy" punishable under Section 120-B of the Indian Penal Code, requires Government sanction before starting prosecution. A proceeding initiated without sanction is *ab initio* void[2], where the accused has been prejudiced.[3]

(2) The Government sanction is necessary for prosecution for any act done by a Judge or a Magistrate or a public servant of superior grade, (not removeable from his office save by or with the sanction of a Local Government) while acting or purporting to act in the discharge of his duty.

Prosecution without sanction is illegal and without jurisdiction[4]. Saction 107 Cr. P. C. provides for the

1. *Igbal* v. *Wilayat*, 17 Cr. L. J. 93 (All).
2. *Abdul Rahiman* v. *Emp.*, 3 Rang. 95; 26 Cr. L. J. 1329, see Sec. 196 Cr. P. C. and In re: *V. Naidu* 42 Mad. 885; *Barindra* v. *Emp*, 37 Cal. 467.
3. *Abdul Rahaman* v. *Emp*, 62 Cal. 749. *Subsequent sanction* *Haricharan* v. *Emp.*, 12 Pat. 353.
4. *Emp.* v. *Bhimaji*, 42 Bom. 172.

protection of higher grade. Government and Public servants and Judges and Magistrates from frivolous private prosecutions. For the definition of '*Judge*' see Section 19 I. P. C. and for definition of '*Public servant*' see Section 21 I. P. C.

Form of Government sanction : Notice to accused before sanction,—if necessary.—It is a matter left to the discretion of the Government, whether such an opportunity should be given to the person concerned before sanctioning his prosecution. The Criminal Procedure Code does not prescribe any particular form for the sanction required by Section 197[1].

The Government granting sanction, acts in its executive and not judicial capacity. The inquiry, prior to granting the sanction, need not be made by examining witnesses on oath[2].

Defamation.—No Court can take cognizance of the offence of 'defamation' except upon a complaint made by some person aggrieved by such offence. But where a person is a *Pardanashin* lady or a minor or a lunatic, the complaint may be made by some one, with the leave of the Court, on his or her behalf[3].

Adultery or enticing away a married woman : Complaint to be made by whom.—No Court can take cognizance of an offence under Section 497 or Section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or in his absence,

1. In the matter of *Kalagava Bapiah*, 27 Mad. 54=2 Weir. 227.
2. In re: *Kalagava*, 27 Mad. 54. Read *Q E.* v. *Venkata*, 23 Mad. 223.
3. Section 198 Cr. P. C.

upon a complaint, on his behalf made with the leave of the Court, by some person who had care of such woman at the time when such offence was committed: Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of Court, make a complaint on his behalf. If the husband keep quiet anothor can not complain.[1]

Information given to a Police-officer is not a complaint. The word 'complaint' referred to in Section 199 Cr. P. C. means a complaint as defined by Section 4, Cl. (h), Cr. P. C[2].

The Madras High Court is of opinion that the written complaint as well as the sworn testimony may be taken together for constituting a complaint[3]. The complaint may be preferred during the absence of the husband, of the woman by any person under whose care she is, at the time of the commission of the offence. A minor husband or his guardian can make a complaint[4].

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1. *Akhoy Maiti* v. *Emp.*, 38 C. W N. 113=A I. R. 1933 Cal. 680.
2. *Tara Prosad* v. *Emp.*, 30 Cal. 910=8 C. W. N. 17.
3. *In re Arunachalam*, 45 M. L. J. 543.
4. *Walli* v. *Emp.*, 23 Cr. L. J. 613 (Lah.).

CHAPTER IV.

TRIAL OF SUMMONS CASES : WITHDRAWAL OF COMPLAINT, FRIVOLOUS ACCUSATION.

Trial of Summons Cases : Explaining case to the accused.—When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted ; but it shall not be necessary to frame a formal charge[1].

The omission in a Summons case to state to the accused, (when he appears or is brought before the Magistrate), the particulars of the offence with which he is charged, is an omission to comply with an express provision of the Code contained in Section 242 Cr. P. C. and this is an illegality[2].

Admission of the accused.—If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded, as nearly as possible, in the words used by him[3], and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly. A pleader appearing for the accused can plead guilty or not guilty.

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1. Section 242 Cr. P. C.
2. *Gopal Krishna Shah* v. *Moti Lal Singh*, 31 C. W. N. 167. *Subhramania Aiyar* v. *K. Emp.*, 25 Mad. 61. *Read.* re: *Khushal* A. I. R. 1932 Nag. 127.
3. *Q. Emp.* v. *Erugadu*, 15 Mad. 83=2 Weir 326 ; what is admission—read re: *Kanhaylal*, A. I. R. 1931 Nag. 100.

Procedure when the accused does not admit guilt.—If the accused does not make such admission, the Magistrate has to proceed with the trial and take evidence[1].

Summoning of witnesses.—The Magistrate may issue summons to any witness directing him to attend or to produce any document. This can be done either on the application of the complainant or of the accused.

Expenses of summoning witnesses · Process fees, etc.—The Magistrate may, before summoning any witness require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited by the party in Court[2].

Evidence – When the accused denies the truth of the complaint made against him, the Magistrate must hear the complainant and his witnesses in support of the complaint, and also the accused and his witnesses on behalf of the defence[3]. All the witnesses produced by the accused should be examined. Parties may enforce attendance of witnesses by getting summons issued from Court.

Complainant's failure to pay process fee.—When a complainant being required to pay fees for summoning witnesses, fails to do so, the Magistrate must deal with the case on the evidence before him and is not justified in dismissing the complaint[4].

1. Re *Luchmi Narayan*—54 All. 212 = A.I.R. 1931 All. 621.
2. Section 244 Cr. P. C. (Cl. 3).
3. In re : *Ahlad Monee Dasee*, 6 W. R. 75 (Cr.).
4. *In the matter of Korapulu* v. *Monappa*, 5 Mad. 160 = 2 Weir. 350.

Inference.—It is, *prima facie*, the duty of the prosecution to call the witnesses who are able to give material evidence relating to the transactions connected with the prosecution, and who must be able to give important information. If such witnesses are not called by the prosecution without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution. The only thing that can relieve the prosecutor from calling such witnesses, is the reasonable belief that, if called, they will not speak the truth. No such corresponding inference can be drawn against an accused[1].

Acquittal or conviction.—If the Magistrate find that the case has been proved, he can convict the accused. He can also convict the accused of any offence, (triable as a Summons case), which appear to have been proved, irrespective of the nature of the complaint. No order of discharge can be passed, under Section 245 Cr. P. C., after hearing evidence.

When the complainant fails to appear.—If the complainant fail to appear on the date fixed or on an adjourned date, the Magistrate can dismiss the complaint and acquit the accused[2]. Where in a Summons case the defence was closed and arguments heard and a date was fixed for delivering judgment, and on such date the complainant being absent, the Magistrate acquitted the accused under Section 247

1. *Q. Emp.* v. *Dhunno Kazi*, 8 Cal. 121=10 C. L. R. 151.
2. Section 247 Cr. P. C. and *Mudoosoodun* v. *Hari Das*, 22 W. R. 40. *Srinmalu* v. *Vinaragdu*, A.I.R. 1932 Mad. 563.

Cr. P. C., it was *held* that as the hearing of the case had already been concluded, Section 247 did not apply[1].

Can a case dismissed under Section 247 Cr. P. C., be restored?—A Magistrate has no jurisdiction to restore such a case to file[2].

Can a second petition of complaint be entertained after dismissal of previous one under Section 247 Cr. P. C.?—The Madras High Court is of opinion that there is no bar to a second trial, as the order of acquittal was passed without any regular trial[3].

The Calcutta High Court, however, has taken a contrary view. It has been *held* by Prinsep and Stanley, JJ. that the dismissal of a case and the acquittal of one of the two accused persons under Section 247 Cr. P. C., on the ground of the complainant's absence, will operate also against a co-accused whose attendance could not be obtained, and against whom the trial did not proceed. No order can be passed under Section 437 setting aside the order and restoring the case to file and directing the case to be proceeded with against the accused[4].

Withdrawal of complaint.—If a complainant, at any time before a final order is passed in any case, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the

1. *Girish Chandra Das* v. *Bhusan Das*, 23 C. W. N. 959.
2. *Ram Coomar* v. *Ramji*, 4 C. W. N. 26.
3. *Kotayya* v. *Venkayya*, 40 Mad. 977 ; 19 Cr. L. J. 497.
4. *Panchu Singh alias Punchanan Singh* v. *Umor Mahomad Sheik*, 4 C. W. N. 346, *Abdul* v. *Noor*, A.I.R. 1934 Lah. 211 (2). *Bhupati* v. *Amio*, 62 Cal. 1119.

Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused[1].

Withdrawal against one accused : Effect on the other accused.—If the case is compromised with one accused under Section 345 Cr. P. C., it may proceed against the other accused. But in case of withdrawal of the case against one accused some High Courts hold that all the accused should get the benefit of the acquittal, but other High Courts have taken a contrary view.

Frivolous accusations : compensation to complainant.—In cases of frivolous or vexatious accusations, the Magistrate, after issuing notice on complainant, may grant to the accused, compensation not exceeding one hundred rupees or if the Magistrate be of the Third class, not exceeding fifty rupees. The Magistrate may also order that in default of payment of the compensation money, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding 30 days[2].

Appeal against order awarding compensation.—A complainant or informant, ordered to pay compensation by a Magistrate of the Second or Third class, or by any First class Magistrate to pay compensation exceeding Rs 50, may appeal from the order[3].

Under Section 250 Cr. P. C., it is the Magistrate, who tries the case and calls upon the complainant to

1. Section 248 Cr. P.C. See also *Bayan Ali* v. *K. Emp.*, 20 C.W.N. 1209 ; 18 Cr. L. J. 107.
2. Section 250, Cr. P. C. *Notice*—re : *Faruqi* A.I.R. 1933 All. 814.
3. Section 250, Para (3), Cr. P. C.

show cause, who can pass order for the payment of the compensation[1].

Can a corporate body be directed to pay compensation ?—Yes[2].

Default in payment: When imprisonment can be ordered.—The Magistrate cannot make an order for imprisonment on the mere intimation by the person who is directed to pay the compensation that he is unable to pay. The issue of a warrant for the levy by distress, of the amount awarded as compensation is a condition precedent to the carrying out of the sentence of imprisonment[3].

CHAPTER V.

SUMMARY TRIALS.

Summary trials.—The provision as to the Summary trials is embodied in Chapter XXII Cr. P. C.

Section 260 enumerates the cases summarily triable. As the section is very important, it is quoted below :—

"(1) Notwithstanding anything contained in this Code—

(a) the District Magistrate ;

(b) any Magistrate of the First Class specially empowered in this behalf by the Local Government; and

1. *Rajaram Manjhi* v. *Panchanan Ghose*, 33 C. W. N. 861.
2. *Municipal Committee* v. *Ratan Chand*, 24 Cr. L. J. 463 (Lah.).
3. In the matter of *Pyravalu Naidu*, 26 Mad. 127=2 Weir 321.

(c) any Bench of Magistrates invested with the powers of a Magistrate of the First Class and specially empowered in this behalf by the Local Government, may, *if he or they think fit*, try in a summary way all or any of the following offences.—

(a) offences not punishable with death, transportation, or imprisonment for a term exceeding six months ; (*An Offence under the Child Marriage Act (1929) comes under this clause. Re : Jwala Prosad A. I. R. 1934 All. 331*).

(b) offences relating to weights and measures under Sections 264, 265 and 266 of the Indian Penal Code ;

(c) hurt under Section 323 of the same Code ;

(d) theft under Sections, 379, 380, or 381 of the same Code where the value of the property stolen does not exceed fifty rupees ;

(e) dishonest misappropriation of property under Section 403 of the same Code, where the value of the property misappropriated does not exceed fifty rupees ;

(f) receiving or retaining stolen property under Section 411 of the same Code, where the value of such property does not exceed fifty rupees ;

(g) assisting the concealment or disposal of stolen property, under Section 414 of the same Code, where the value of such property does not exceed fifty rupees ;

(h) mischief under Section 427 of the same Code ;

(i) house-trespass, under Section 448, and offences under Sections 451, 453, 454, 456, and 457 of the same Code ;

(j) insult with intent to provoke a breach of the peace under Section 504, and criminal intimidation, under Section 506, of the same Code ;

(k) abetment of any of the foregoing offences ;

(l) an attempt to commit any of the foregoing offences, when such attempt is an offence ;

(m) offences under Section 20 of the Cattle Trespass Act, 1871[1].

Procedure.—In 'Summary trials' the procedure prescribed for 'Summons cases' is followed in Summons cases, and the procedure prescribed for 'Warrant cases' is followed in Warrant cases, except as provided in the Cr. P. C[2].

Limit of Punishment.—No sentence of imprisonment for a term exceeding three months can be passed in any case tried summarily[3].

Records of Summary trials in appealable and in non-appealable cases.—Records are to be kept in the manner prescribed in Sections 263 and 264 Cr. P. C. In non-appealable cases a brief statement of the reasons for conviction has to be noted and in appealable cases the judgment should embody the substance of the evidence and there should be clear findings on questions of fact[4]. The plea of the

1. Section 260 Cr. P. C.
2. Section 262 Cr. P.C. Re: *Cross-examination* Read re : *Gokaran* 7 Luck. 699.
3. Two offences Read re : Nga Po 12 Rang. 122
4. *Emp. v. Jagomohan*, 24 Cr. L. J. 916 (Oudh). Read 58 Bom. 298 (*infra*).

accused must also be noted[1]. There is no provision for framing charge in a summary trial. The Calcutta High Court insists on recording the evidence in brief, so that the Court in revision may see and consider it[2]. Although a Magistrate is not required to record any evidence,—he should in recording his reasons for the conviction, state the evidence briefly so that the High Court, on revision, may judge whether there were sufficient materials before him to support the conviction[3]. The Magistrate may not record any evidence in a summary trial but is bound to hear all the witnesses and the judgment must show the evidence on which the conviction is based. Their lordships of the Calcutta High Court, observed in the case of *Jabbar Sheikh* v. *Tomiz Sheikh*[4], "We are surprised to find that the learned Sub-divisional Officer should so misapprehend the provisions of the law under Section 263 Cr. P. C. That section does not excuse the Magistrate from hearing the evidence of all witnesses. It excuses him from recording the evidence of any of the witnesses. But it is an elementary point that recording evidence is not the same as hearing evidence. In all criminal cases, if the accused denies the charge, the complainant and such witnesses as he may produce must be examined and the case must be decided upon the effect of their evidence."

1. In re: *Murat Singh*, 26 A. L. J. 109.
2. *Ainuddi* v. *Q. E.*, 27 Cal. 450.
3. *E.* v. *Punjab Singh*, 6 Cal. 579. re : Tippanna 58 Bom. 298.
4. 16 C. W. N. 984.

CHAPTER VI.

TRIAL OF WARRANT CASES.

Trial of Warrant cases : Evidence for the prosecution.—When the accused appears or is brought before a Magistrate such Magistrate proceeds to hear the complainant (if any) and takes all such evidence as may be produced in support of the prosecution :

Provided that the Magistrate is not bound to hear any person as complainant in any case in which the complaint has been made by a Court.

The Magistrate has to ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon, to give evidence before himself, such of them as he thinks necessary[1]. The Magistrate has no discretion to dispense with the examination of witnesses summoned by the prosecution. An order of discharge, before all the witnesses for the prosecution are examined, is illegal[2]. But the Magistrate has discretion in refusing to summon witnesses whom he thinks unnecessary[3].

Non-payment of process fees : Summoning of witnesses in Warrant cases.—In Summons cases the

1. Section 252 Cr. P. C.
2. *Q. Emp.* v. *Parasuram Naikar*, 4 Mad. 329.
3. *Menon* v. *Krishna Nayar*, 49 Mad. 978; 51 M. L. J. 323; 27 Cr. L. J. 1123.

Magistrate has power to realise expenses before issuing summons to witnesses. But he has no such power in Warrant cases[1].

Discharge of accused.—If the Magistrate finds no case against the accused he has to discharge him[2].

Re-hearing of the case.—A Magistrate is competent to re-hear a Warrant case after the accused was discharged[3]. There is no express provision in the Code of Criminal Procedure to the effect that the dismissal of a complaint shall be bar to a fresh complaint being entertained so long as the order of dismissal remains unreversed[4].

Framing of charge.—In a Warrant case it is imperative on the Magistrate to draw up a formal '*charge*' against the accused in the manner indicated in Section 254 of the Code of Criminal Procedure. He should also comply with the provisions of Section 342[5]—(*Examination of the accused*).

Framing of '*charge*' indicates that a *prima facie* case has been made out against the accused. A Magistrate, after framing charge, cannot pass final orders without taking further evidence[6].

Accused to plead 'Guilty' or 'Not Guilty'.—After charges are framed and explained to the accused, the

1. *Bridhichand* v. *Lakhmi Chand*, 13 Cr. L. J. 554.
2. Section 253 Cr. P. C.
3. *Dwarakanath Mandal* v. *Benimadhab Banerjee*, 28 Cal. 652. F.B.
4. *Q. Emp.* v. *Dole Govinda Das*, 28 Cal. 211.
5. *Mahomed Rafique* v. *K. Emp.*, 43 C. L. J. 100.
6. *F. D. Bellew* v. *Mrs. Parker*, 7 C. W. N. 521.

accused is asked to state whether he is guilty or he has any defence to make. (*What amounts to pleading guilty—read A.I.R. 1935 Cal. 681.*)

If the accused pleads guilty, the Magistrate records the plea and may, in his discretion, convict him thereon[1].

Statement of accused : how to be recorded.—The Court should record what the accused says. It is not enough if the substance of the statement is recorded. Unless the accused admits all the elements necessary to constitute the offence, he cannot be said to have pleaded guilty[2]. (*See Part II, Ch. XVI*)

Enhancement of sentence : Previous conviction.—Previous conviction is to be proved after the accused is found guilty of the present charge. (*See Part II, Ch. XVI*).

Defence : Cross-examination of prosecution witness.—If the accused refuses to plead or does not plead or claims to be tried, he is required to state (at the commencement of the next hearing of the case, or if the Magistrate, for reasons to be recorded in writing, so thinks fit forthwith), whether he wishes to cross-examine any, and if so, which of the prosecution witnesses whose evidence has been taken.

Recalling Prosecution witness for cross-examination.—Section 256 Cr. P. C. does not prohibit cross-examination before a charge is framed in a Warrant case, it permits a further cross-examination expressly

1. Section 255 Cr. P. C.
2. *Q. v. Samaullah*, 25 W. R. 23. Read—re : *Matadin* A.I.R. 1931 *Oudh* 166.

directed to the case found and embodied in the charge[1].

If an accused person desires to recall and cross-examine the witnesses for the prosecution, the time for him to express such desire is when the charge is read over to him and he is called upon to make his defence[2]. After a charge has been drawn up, the accused is entitled to have the witnesses for the prosecution re-called for the purpose of cross-examination ; Section 256 of the Code of Criminal Procedure gives the Magistrate no discretion in the matter.

After framing charge it is the duty of the Magistrate to require the accused to state whether he wishes to cross-examine, and if so, which of the witnesses for the prosecution whose evidence has been taken. The fact that there has already been some cross-examination before the charge has been drawn up, does not affect this privilege. It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application, on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice[3].

Re-summoning of witnesses for cross-examination : Costs.—The Magistrate is bound to re-summon the witnesses for cross-examination at the Government expense. After the charge was drawn up, the accused claimed the right to have the medical officer re-sum-

1. *Queen Empress* v. *Sagal Samba,* 21 Cal. 642.
2. *Faix Ali* v. *Karomdi,* 7 Cal. 28=4 Shome L. R. 142=5 Ind. Jur. 474=8 C. L. R. 325. re : *Md. Hosain* 8 Luck. 135 (1932).
3. *Zamunia* v. *Ram Tahal,* 27 Cal. 370=4 C. W. N. 469.

moned for the purpose of cross-examination, the Magistrate refused to allow process except on payment of fees for his attendance, and the Magistrate, in his explanation to the High Court, said that the accused had opportunity to cross-examine the witness immediately after his examination-in-chief was concluded but that he had declined to do so : It was *held* that under the terms of Section 256 Cr. P. C. the accused was entitled to claim this as a matter of right and that Section 257 Cr. P. C. did not apply to the present case[1].

Summoning of witnesses for the accused : Costs.—After entering upon his defence the accused may apply for summoning his witnesses. As stated above he may also apply for production of any witnesses for cross-examination. The Magistrate is bound to grant the prayer unless it appears that the application has been made for the purpose of vexation or delay or for defeating the ends of justice. If the accused had an opportunity, after the charge was framed, for cross-examining the witness, the Magistrate may refuse to summon such a witness for cross-examination unless the accused pays the necessary costs.

Examination of a witness as a Court-witness : Right of accused to cross-examine.—During the trial of a case the accused obtained process for the attendance of a witness. Before the witness appeared, the accused asked the Court to countermand the order for his attendance, but the Court refused to do so. When the

1. *Iswar v. Kali Kumar*, 4 C.W.N. 351.
Re : *Md. Hosain* A.I.R. 1932 Oudh 298. (*Supra*).

witness attended, the accused declined to examine him. He was thereupon examined by the Court and upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so. *Held*, that under the circumstances the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him[1].

Conviction or acquittal.—After taking evidence of both sides and on hearing the parties or their pleaders a Magistrate either acquits or convicts the accused.

Discharge of accused if the complainant is absent.—*effect*. If on any day fixed for the hearing of the case the complainant is absent and the offence can be lawfully compounded, or is not a cognizable offence, the Magistrate may at any time before the charge has been framed, discharge the accused.[2]

Where an order of discharge under Section 259 of the Code of Criminal Procedure has been passed by a Magistrate, such an order will not preclude him from proceeding with the case on a fresh complaint. (*Read E.* v. *Morarji* 59 Bom. 171).

An order of discharge under Section 259 of the Code of Criminal Procedure is not an acquittal nor has it the effect of an acquittal under Section 403[3].

1. *Mohendro Nath Das Gupta* v. *Emperor*, 29 Cal. 387.
2. Section 259 Cr. P. C.
3. *Chinnathambi Mudali* v. *Salla Gurusamy Chetty*, 28 Mad. 310=2 Weir 325A. 2 Cr. L. J. 758 and *Dwarka Nath Mondul* v. *Beni Madhab Banerjee*, 28 Cal. 652 (F. B.)

CHAPTER VII.

ENQUIRY BEFORE COMMITMENT TO THE COURT OF SESSIONS.

Cases triable by the Courts of Sessions: Enquiry by Magistrate.—Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the First Class may commit any person for trial to the Court of Sessions or High Court for any offence triable by such Court[1].

Enquiry—preliminary to commitment: taking of evidence.—The Magistrate shall take all such evidence as may be produced in support of the prosecution or on behalf of the accused or as may be called for by the Magistrate.

Note. What is commencement of inquiry.—*Read Mohindra Chandra Sing* v. *E.*, A.I.R. 1932 Lah. 103—This is a case of an absconding accused.

Right of accused to cross-examine Prosecution witnesses.—An accused person has the right to cross-examine the witnesses for the prosecution after their examination at the judicial inquiry before the Magistrate, previous to commitment.

Where depositions of witnesses for the prosecution before the Magistrate, previous to commitment, were taken without any cross-examination by the

1. Section 206 Cr. P. C.

accused being allowed, it was *held* that such depositions were improperly treated as evidence in the Sessions Court, as they had not been "duly taken" in the presence of the accused, within the meaning of Sec. 288 of the Code[1].

Reserving of cross-examination by accused: difference between warrant case and enquiry.—In a warrant case, the accused can reserve his right to cross-examine until the charges are framed, but under Section 208 of the Code of Criminal Procedure in an enquiry into a case triable by the Court of Sessions the accused has no right to reserve cross-examination. He must exercise his right to cross-examine a prosecution witness just after the close of the examination-in-chief of that witness.

Where the Magistrate asked the accused persons to cross-examine each witness before he left the box and they refused to cross-examine the witnesses but at the end of the examination of all the witnesses, one of the accused wanted to cross-examine some of them and the Magistrate refused the prayer: it was *held* that there being no express provision of the law entitling the accused to reserve cross-examination of all the witnesses the Magistrate committed no error of law[2].

Issuing process for production of further evidence.—A Magistrate can do this on the application of either

1. *Q. Emp.* v. *Sagal Samba Sajao*, 21 Cal. 642.
2. *G. V. Raman* v. *K. Emp.*, 33 C. W. N. 535 and *Saadat Mian* v. *K. E.*, 1 L. R. 6 Pat. 329 (1926).

the complainant or the accused. The accused asked the Magistrate to summon certain witnesses for the defence; but the Magistrate without summoning such witnesses passed an order committing the accused to the Court of Sessions; *held* that the Magistrate was bound to take all such evidence as the accused was prepared to produce before him, and that the order of commitment was bad in law[1].

Discharge of the accused : his examination by the Magistrate.—When the evidence has been taken, and the Magistrate has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him.[2]

Object of examining the accused.—The authority given to the Court to examine an accused does not contemplate the cross-examination of such accused, nor can the Court endeavour by series of searching questions, to force the accused to incriminate himself. The real object involved in the power given to the Court under Section 342 of the Code of Criminal Procedure is to enable the Judge to ascertain, from time to time, from the accused (especially if he be undefended) such explanation as he may desire to give regarding any statement made by the witnesses,

1. *Emp.* v. *Muhammad Hadi*, 26 All. 177=1903 A. W. N. 215.
2. Section 209 Cr. P. C.

or at the close of the case for the prosecution, to elicit from the accused how he proposes to meet such portions of the evidence which, in the opinion of the Court, implicates the accused in the commission of the offence with which he stands charged[1], (*See Part II Ch. XVI*).

Weighing of evidence by the Magistrate : commitment.—When a prosecution is started before a Magistrate on charges exclusively triable by a Court of Session, and there is some evidence to support such charges, it is not obligatory on the Magistrate to commit the accused to the Court of Sessions in all cases He should exercise his discretion and consider the facts and decide whether or not he should try the case himself[2].

Framing of charge before commitment.—When after taking evidence and on an examination (if any) of the accused, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he is to frame a charge declaring the offence for which the accused has to be tried.

Explaining the charge to the accused : copy to accused.—As soon as the charge has been framed, it has to be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost[3].

Magistrate to call upon the accused to submit a list of witnesses, if any, to be examined by him at the

1. *Hossein Buksh* v. *Emp.*, 6 Cal. 96=6 C. L. R. 529.
2. *K. Emp.* v. *Hari Das Mitra*, 37 C. L. J. 34.
3. Section 210 Cr. P. C.

Sessions trial.—The accused shall be required, after the charge is framed, to give orally or in writing, a list of the persons (if any) whom he wishes to be summoned for giving evidence at his trial in the Sessions Court. The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time. The Magistrate may also examine those witnesses and consider their evidence along with other evidence and if the Magistrate be satisfied that there are not sufficient grounds for commiting the accused, he may cancel the charge and discharge the accused[1]. The Magistrate is required to record his reasons in his order for commitment. A 'commitment order' may be quashed by the High Court in revision.

Summoning of witnesses for accused to depose for him in the Sessions Court.—The Magistrate is bound to summon the witnesses for the defence after commitment, but he has discretion not to issue summons on any unnecessary witness unless the accused deposits costs[2].

Duty of Magistrate after commitment.—The Magistrate has to send the charge, the record of the enquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session. The Magistrate may also summon supplementary witnesses named by the accused after commitment[3].

1. Section 213 Cr. P. C. and *Md. Abdul* v. *Baldeo*, 44 All. 57.
2. Section 216 Cr. P. C.
3. Section 219 Cr. P. C.

CHAPTER VIII.

TRIAL BY THE COURT OF SESSION.

Sessions Case.—As stated before, if the Magistrate after recording evidence and hearing the parties consider that a *prima facie* case, triable exclusively by the Court of Sessions, has been made out, he commits the case to the Sessions Court for trial of the accused. This procedure has to be followed if the accused is charged with more than one offence, any one of which is triable by the Court of Session. For offences triable exclusively by the Court of Session—*See Cr. P. C. Schedule II.*

Selection of Jurors and Assessors.—The Jurors and Assessors are selected by the District Magistrate in consultation with the District Judge and a list is published in the Local Official Gazette. Any one whose name appears in the preliminary list can apply, if he has sufficient grounds for doing so, to the Magistrate for exemption from liability to serve as a juror or assessor[1]. A list of special jurors is also prepared in the districts in which the Local Government direct that the trial of certain offences, shall if the Judge so direct, be by a special Jury.

In open Court the Sessions Judge draws by ballot the names of not less than double the number of jurors or assessors required for the trial of a case and the District Magistrate is requested to summon the

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1. **For grounds of exemption see Section 320 Cr. P. C.**

jurors or assessors so selected to attend the Court on the date fixed for trial of the case. A juror or assessor is liable to pay a fine not exceeding Rs. 100 for non-attendance. The Court may, however, remit the fine if good cause be shown[1].

Sessions trial—When the Court is ready to take up the Sessions case and to commence the trial, the accused appears before the Court or is brought before the Court and the charge is read out and explained to him and he is asked whether he pleads guilty to the charge or charges. The trial of the case commences when the charge is read out and the accused claims to be tried[2]. If the accused pleads guilty, the plea is recorded and he may be convicted thereon. It is, however, open to the Court to refuse to accept the plea and enter into evidence[3]. Where the prisoner does not admit all the elements of the charge he can not be said to plead guilty to the charge. In a murder case, the Court generally does not accept the plea of guilty in as much as murder is a mixed question of fact and law and the Court has to satisfy itself whether the accused understands what pleading guilty to the charge means. An accused may admit that he struck the deceased without necessarily admitting that he committed the murder. ; because the

1. Sections 326, and 332 Cr. P. C.
2. *Q. Emp.* v. *Bastiano*, 15 Bom. 514.
3. *Sukdeb* v. *Emp.*, 13 C. W. N. 552.
Kesho Sing v. *Emp.*, 18 Cr. L. J. 742.
Q. Emp. v. *China Paruchi*, 23 Mad. 151.

intention or knowledge required for the offence may be wanting[1].

If the plea of guilty of the accused is accepted and he is convicted, his trial ends and he may be examined as a witness against the other accused in the case[2].

If the accused refuses to plead or does not plead or if he claims to be tried, the Court has to proceed to choose jurors or assessors, as the case may be, and to try the case.

Trial by Jurors or Assessors.—The Local Government may direct that certain offences in a district shall be triable by Jury and others by assessors. Similarly the Local Government may also direct that in certain districts the trial shall be with assessors only.

If in a district the accused is tried for offences triable by Jury as well as for offences triable by assessors, the Sessions Court may try the case with the help of jurors and those very jurors may also be appointed to serve as assessors.

In a trial in the High Court the Jury shall consist of 9 persons and in Moffusil Courts not less than 5 and not more than 9—provided that where any person is charged with any offence punishable with death, the Jury shall consist of not less than 7 and if practicable 9 persons.

Choosing Jurors.—The jurors are chosen by lot from the persons summoned to act as such, and in case of

1. *Dalli* v. *Emp.*, 20 A. L. J. 328.
Emp. v. *Laxmya*, 19 Bom. L. R. 356.
Queen v. *Bhadu*, 19 All. 119.
2. *Queen* v. *Chinna*, 23 Mad. 151.
Queen v. *Nirmal*, 22 All. 445.
Q. Emp. v. *Ashutosh*, 4 Cal. 483 (F. B.).

a deficiency in the number of jurors, the remaining jurors may be chosen from such other persons as may be present in Court.[1] The object of choosing jurors by lot is to ensure strict impartiality in the selection. Irregularity in choosing the Jury affects the constitution of the Court and it cannot be cured by Section 537 Cr. P. C[2]. The manner of choosing by ballot applies only to jurors attending in obedience to summons and not to persons chosen from the persons present in the Court. (*Re deficiency*—see *Munir* v. *E.* 60 Cal. 725.)

When jurors have been chosen they select one of them to be their foreman. Then the jurors are sworn. When the trial is held with the aid of assessors two or more of them are chosen by the Judge from the persons summoned. If a juror or assessor fails to appear on a subsequent date of trial, the Jury or assessors are discharged and a fresh set of jurors or assessors are chosen.

Objection to selection of Jurors.[3]—As a juror is chosen by lot, he appears and the accused is asked if he has any objection to be tried by the said juror. The accused may object to any particular juror on the ground of partiality etc., mentioned in Section 278 Cr. P. C. and the Judge has to decide the objection. If the objection is allowed, another juror is chosen by lot in his place. A person who is deaf

1. *Supdt. and R. L. A.* v. *Ajit Munshi, L. I. R.* 1932 Cal. 750 (2) (*time of objection*).
2. *Emp.* v *Jhubboo*, 8 Cal 739 ; *Brajendra Lal Sarkar* v. *K. E.*, 7 C. W. N 188.
3. *Read Mukunda* v. *E.*, 61 Cal. 90 and *E.* v. *Beni Paramanik*, 62 Cal 900.

or blind or is unable to understand the language of the Court cannot act as a juror at the time of trial. If the trial had begun with such a juror the accused has to be tried *de novo*[1].

Misconduct of a Juror : Discharge of Juror.– A Judge has to hold an enquiry about the alleged misconduct and if the juror is found guilty, he is discharged and a fresh trial is held with a new set of jurors[2]. The Jury may be discharged if the prisoner becomes incapable of remaining at the bar.

Trial by countrymen of accused as Jurors or Assessors.—Under the new Section 284-A Cr. P. C. Indians and Europeans, in a trial with the aid of assessors, can claim to be tried with their own countrymen as assessors. In a trial by Jury before the High Court or the Court of Sessions, of a European or an Indian British subject the majority of Jury shall, if such accused person, before the first person is called and accepted so requires, consist in the case of a European British subject, of persons who are Europeans or Americans and in the case of an Indian British subject, of Indians[3]. For joint or separate trial of European and Indian British subjects or Europeans and Americans see Section 285-A Cr. P. C. *For meaning of "European"*—see *Guthrie* v. *E.* 13 Pat. 177.)

Commencement of trial : Opening of the case : Examination of witnesses.—When the jurors or

1. *Queen* v. *Virasami*, 19 Mad 375.
2. *Rahim Shaik* v. *Emp.*, 50 Cal. 872.
3. Section 275 Cr. P. C. and Section 14 of the Criminal Law Amendment Act (XII of 1923).

assessors have been chosen the Public Prosecutor opens the case stating briefly the facts and explaining the law relating to the offences with which the accused is charged. He then shortly states the evidence by which he expects to prove the guilt of the accused. The Public Prosecutor then examines his witnesses. He is bound ordinarily to call and examine all material witnesses sent up by the committing Court.

Non-examination of prosecution witnesses by the Public Prosecutor : Inference—In a trial before the Sessions Court the prosecution is bound to tender for cross-examination all witnesses sent up by the committing Magistrate. The Public Prosecutor is not bound to call witnesses who will not, in his opinion, speak the truth or support the points he desires to establish by their evidence[1], but in such circumstances he should explain to the Court, his reasons for doing so. In the case of *Nagendra* v. *Emp*, Newbould and Suhrawardy, JJ. pointed out that such witnesses as are examined before the committing Magistrate but are not examined in the Sessions Court by the Crown should be tendered for cross-examination by the accused[2]. In the absence of any reasonable explanation or showing good grounds apparent on the face of the proceedings, an inference unfavourable to the prosecution may be drawn from the non-production of these witnesses[3].

1. *Emp.* v. *Kaliprosanna*, 14 Cal 245.
2. 38 C. L. J. 203.=27 C. W. N. 820.
3. *Queen* v. *Tulla & others*, 7 All 904.

Examination of witnesses not sent up by the committing Magistrate.—The prosecution cannot demand, as of right, to examine any witness not summoned by the committing Magistrate[1]. But under Section 540 Cr. P. C., a Magistrate or a Judge may summon and examine any person as a Court witness, intimating the parties beforehand, so that there may be proper cross-examination[2]. By the second part of Section 540 Cr. P. C., the Court is bound to summon any witness if his evidence appears to be essential to the just decision of the case.

Statement of the accused to be tendered.—After the witnesses for the prosecution are examined-in-chief and cross-examined and re-examined the Public Prosecutor has to tender the examination of the accused recorded by or before the committing Magistrate and this is read as evidence in the case[3].

Tendering of deposition of a witness taken before the committing Magistrate.—The evidence of a witness, duly recorded by the committing Magistrate in the presence of the accused, may be treated by the Judge as an evidence in the case, when the witness in the Court of Session gives a version different from what he said in the preliminary enquiry[4]. A defence lawyer is not entitled to refer to the evidence of a witness before the committing Magistrate unless the atten-

1. *Queen* v. *G. W. Hayfield*, 14 All. 212.
2. *Udho Ram*, A. I. R. 1929 Lah. 120=10 Lah. 790.
3. Section 287 Cr. P. C.
4. *Emp.* v. *Mulu*, 2 All. 646. *Read Puran* v. *E.*,15 Lah. 765. *Rajaram* v. *E.*, 1935 A. L. J. 668.

tion of the witness is drawn to the alleged contradiction and the witness is given an opportunity of explaining the same[1].

When the accused should be asked to adduce evidence.—After the prosecution evidence is closed, the Court records the statement of the accused and the accused is asked whether he likes to adduce evidence. If the accused like to adduce evidence he is allowed to do so. If he says that he does not, the Public Prosecutor sums up the case.

Defence.—Where the accused prefers to adduce evidence, his pleader opens the case stating the facts and the law on which he intends to rely and commenting on the prosecution evidence. He then begins the examination of his witnesses, and after their cross-examination and re-examination, sums up his case. The accused may examine witnesses named by him before the committing Magistrate or witnesses who are present in the Court. But he has no right to summon or examine any new witness at this stage. But the Judge has an inherent power, as stated before, to summon or examine any material witness, giving notice before-hand, to the parties.

What is meant by adducing evidence by the accused : right of reply.—The giving of any documentary evidence, by an accused person during the cross-examination of a witness for the prosecution[2] and

1. *Emp. v. Zawar Rahaman*, 31 Cal. 142, followed by the Patna High Court in the case of *Lachmi Lal* v. *Emp.*, A. I. R. 1922, Pat. 40.

2. *Emp.* v. *Kali Prasanna Das*, 14 Cal. 245, judgment of Trevelyan J.

before the accused is asked if he means to adduce evidence, does not amount to adducing evidence by the accused and does not give a right of reply to the prosecution. A different view was, however, taken by the Allahabad High Court in the case of *Emp.* v. *Hayfield*[1] before clause (c) was added to section 292 Cr. P.C.

Reply by the prosecution.—If the accused does not adduce evidence, the Public Prosecutor sums up the case and the defence lawyer then addresses the Jury. But if the defence examines witnesses and then sums up the case, the Public Prosecutor has a right of reply. In this connection it is worth noting that putting in of depositions of prosecution witnesses before the committing Magistrate, does not amount to adducing evidence by the accused (Vide Judgment of Geidt, J., in the case of *Emp.* v. *Robert Stewart*)[2]. The Jury or the assessors may inspect the place of occurrence or any other material place if they like to do so and the Court arranges for it.

Charge to the Jury.—When the case for the defence and the Public Prosecutor's reply are concluded the Court proceeds to charge the Jury, by summing up the evidence for the prosecution and the defence and laying down the law by which the Jury are to be guided. If the Court considers that there is no evidence against the accused, the Court should direct the Jury to return a verdict of not guilty. This the

1. 14 All. 212. Read in this connection *Kundun Singh* v. *E.*, A. I. R. 1931 Lah. 534 (*where no oral evidence adduced*).
2. 31 Cal. 1050.

Judge cannot do if there is some evidence, good or bad, against the accused[1].

How to charge the Jury.—The Jury are responsible for the verdict and are sole judges of facts; it is to be remembered that the Judge's *charge* is not only for the purpose of stating the law and explaining it to the Jury but also for helping them to come to correct findings of facts. It is the duty of the Judge to advise the Jury as to the logical bearing of the evidence on the questions to be decided by them. He ought to do this to minimise the chances of error on the part of the Jury. This is a privilege granted to the Judges and a duty cast upon them. The principal points should be clearly put to the jurors and it should appear from the Judge's *charge* that he did so[2]. The forms and contents of the *charge* will vary according to the circumstances of the individual cases and with the nature of the evidence. The Judge has to deal with the mode in which the case for the prosecution and the case for the defence are conducted. Generally speaking, it is usual to begin a *charge*,—setting out the offence or offences with which the prisoner is charged and explaining the law relating to such offence or offences. Then the case for the prosecution and the case for the defence may be referred to and such comments need be made on the evidence adduced on either side, as the Judge may think desirable or useful[3]. Care should be taken

1. *Queen* v. *Greedhary Manjee*, 7 W. R. 39.
2. *Affiruddi* v. *King Emp.*, 23 C. W. N. 833.
(Judgment of Chaudhuri J. p 840).
3. *Same case*—Judgment of Richardson J. p 838.

to place the defence set up, fairly before the Jury and to ensure that the Jury appreciate the *issue* or *issues* to be decided by them. The *charge* should include the usual *warning* as to the duty of the Jury to the prosecution on the one hand and to the prisoner on the other. The Judge should address the Jury in a manner, simple and direct. Use of expressions assuming the guilt of the accused and of slander and colloquial phrases and of the interrogative method in charging the Jury has been condemned by Tennon, J., in the case of *Amiruddin* v. *King Emp.*[1] If the Judge does not know the Court language he can take assistance of his officers in explaining the charge[2]. If possible, the Judge should charge the Jury in the vernacular which the Jury understand. He must explain the law to the Jury in a popular language and make them understand the essentials of the offence with which the accused is charged. It is the duty of the Jury to accept the law as laid down by the Judge without any extraneous aid. If the Jury is unable to understand the law fully and clearly, it is the duty of the Judge to explain them afresh. The Judge should not hand over any legal treatise to the Jury for finding out the law[3]. The Judge should warn the Jury in the beginning of the *charge* that they are the sole judges of facts and are not bound by the opinion of the Judge, if any, expressed. It is not enough for the Judge, in summing up the evidence, to merely read it out

1. 22 C. W. N. 213.
2. 23 C. W. N. 833. *(supra)*
3. *The Superintendent & Remembrancer of Legal Affairs*, (Assam) v. *G. C. Wilson*, 30 C. W. N. 693.

to the Jury. It is incumbent upon him to analyse the evidence and to present before the Jury, such points as legitimately arise in favour of the accused[1]. The Jurors are ordinarily laymen and are not used to weigh evidence; the Judge should, therefore, help them so that they may be in a position to take the right view of the case. The Judge cannot possibly state every item of the evidence, but he should give a summary of the important points in the evidence and also state what legal inferences can be drawn from the evidence either for or against the accused. The Judge is bound to place all the points in favour of the accused, before the Jury. The Judge may say that it would be unsafe to accept any particular evidence stating that it is open to the Jury either to accept or reject it[2]. The Jury may be told that they need not bother themselves with the minor discrepancies in the evidence; but if there are material discrepancies in the evidence, the Judge is bound to point them out. If he fails to do so, the *charge* will be bad for misdirection[3]. Where the trial is a prolonged one, the Judge should read over the depositions of the important witnesses to the Jury. No rulings or authorities should be cited to the Jury nor should they be asked to differentiate or form any opinion whatever on any authority[4] as such pro-

1. *Emp.* v. *Rajab Ali*, 31 C. W. N. 881.
2. *Samiuddin* v. *Emp.*, 32 C. W. N. 616.
3. *Enayeth Hossain* v. *Emp.*, 49 All. 209.
4. *Mehar Sirdar* v. *E.*, 16 C. W. N. 46 (*Judgment of Holmwood and Sharufdin JJ.*)

cedure confuses the mind of the Jury and might constitute misdirection[1].

Explanation of Law: Duty of the Judge.—The Judge is to decide all questions arising in the course of the trial and especially all questions relating to the relevancy of facts so as to prevent the production of inadmissible evidence. He may, while summing up, express his opinion upon any question of fact. The Judge shall, however, as much as possible, refrain from expressing his opinion on facts in strong terms[2]. After giving clear warning that the Jury is at liberty either to accept or reject his expression of opinion, the Judge can, in a mild way, indicate his view on the facts. In the case of *Nagendranath* v. *King Emp.*[3], their lordships remarked that the *charge* which does not indicate the opinion of the Judge amounts to a most colourless direction. It is the duty of the Judge to explain to the Jury, the distinction between murder and culpable homicide and to tell them under what view of the facts the prisoner ought to be convicted of murder or culpable homicide or to be acquitted[4]. The Judge is to explain to the Jury the legal construction to be put upon a document[5]. Omission to explain the law as to confessions in clear terms is misdirection. It is for the Judge to admit

1. *Miher Sardar* v. *King Emp.*, 16 C. W. N. 46.
2. *Bharat Chandra*, 1 W. R. pp. 2 (Cr).
3. 34 C. W. N. 164 ; *Madan Tilakdar* v. *Emp.*, 41 C. W. N. 508.
4. Section 299 Cr. P. C., Illustration A.
   Queen v. *Setul Chandra Bagchi*, 3 W. R. 69.

in evidence, the confessions of an accused, and it is for the Jury to decide what weight should be attached to such confessions and whether they are true or false[1]. They may also decide about the voluntariness of the confessions for coming to their conclusions. The Judge has to say in his *charge* that the confession of an accused is very weak evidence against the co-accused and that it requires careful scrutiny and corroboration[2]. He ought to tell the Jury whether there is evidence that does corroborate the evidence of the approver so far as the complicity of the accused in the crime is concerned, and he should draw the attention of the Jury to that evidence. He is to warn the Jury that it is unsafe to act on the evidence of an approver unless it is corroborated in material particulars. It is the function of the Jury either to accept or reject the evidence as to corroboration[3]. In a charge of rioting, the Judge should explain to the Jury, the common object of the unlawful assembly, otherwise the *charge* may be bad for non-direction[4]. The weight to be attached to retracted confessions should be clearly explained to the Jury[5]. He is to tell the Jury, in a case where the prisoner takes the defence of causing hurt in the exercise of the right

1. *Kihro Mondal* v. *King Emp.*, 33 C. W. N. 1112.
   Emp. v. *Keshori*, 10 Cr. L. J. 65.
2. *Queen* v. *Ramdyal*, 21 W. R. 47.
3. *Rebati Mohon* v. *King Emp.*, 32 C. W. N. 945.
4. *Rahamatali* v. *Emp.*, 4 C. W. N. 196.
5. *Abdul Goni* v. *King Emp.*, 53 Cal. 181.

of private defence, that it is for the prisoner to prove his plea[1].

If the prosecution withheld important witnesses the Judge is to tell the Jury that they can draw an inference that if those witnesses had been examined they would not have supported the prosecution case[2]. In a case where there are more than one accused, (*e. g.* in cases of dacoity, or rioting or conspiracy), it is misdirection not to invite the attention of the Jury to the evidence against each prisoner. The Judge is to direct the Jury to consider the statement made by each accused with reference to the charge against him[3]. All the circumstances in favour of the accused must be clearly set forth in the *charge*. If this is not done it amounts to serious misdirection[4]. The Judge should place before the Jury, the important evidence in favour of the defence. In a case, where there are several accused and the defence is different, the Judge is to tell the Jury that they should consider the case of each accused individually[5].

The Judge must say at the outset, in his *charge*, that the accused must be presumed to be innocent till the prosecution rebuts the presumption and establishes by reliable evidence, the guilt of the

1. *Afiruddi* v. *King Emp.*, 20 Cr. L. J. 661.
2. *Md. Yunus* v. *Emp.*, 50 Cal. 318.
   Taja Ali v. *Emp.*, 7 Pat. 50.
3. *Hemanta* v. *Emp.*, 47 Cal. 46.
4. *Emp.* v. *Fakira.*, 40 Bom. 220.
   Rahamat Ali v. *Emp.*, 4 C. W. N. 196.
5. *Khijiruddin* v. *Emp.*, 53 Cal. 372.=27, Cr. L. J. 266.

accused. The Judge must also say that in the case of reasonable doubt as to whether the accused is guilty or not, the accused should be given the benefit of the doubt and acquitted.

All non-directions are not misdirections ; but non-directions on serious points may amount to misdirections. A misdirection, unless it occasions a failure of justice, does not justify a reversal of the verdict of the Jury[1]. If the verdict be correct it is not disturbed by the High Court even if there be misdirection[2].

Retirement of the Jury and the verdict.—After the Judge has finished the *charge*, the Jury will retire to consider their verdict. No outsider can hold any communication with the Jury before the verdict is returned. When the Jury return, the foreman of the Jury informs the Judge of their verdict or the verdict of the majority. The Jury has a right to convict the accused for a lesser offence even though there was no charge for the same[3]. The Judge should ask the Jury about their verdict, unanimous or of majority, against each accused on each count of charge[4]. The Judge may recharge the Jury if the Jury did not clearly understand the exposition of law by the Judge[5]. There can be no valid verdict if the Jury do not understand the nature of the offence, the

1. *Legal Remembrancer* v. *Shyam Sunder*, 26 C. W. N, 558.
2. *Emp.* v. *Naimaddin*, 22 C. W. N. 572.
3. *Pattikadan* v. *Emp.*, 26 Mad. 243.
4. *Karam Khan* v. *Emp.*, 50 Cal. 658.
5. *In Re Palanesatevan*, 12 Cr. L. J. 124.
Hamid Ali v. *Emp.*, 57 Cal. 61.

accused is charged with. The Judge may ask the Jury such questions as are necessary to ascertain what their verdict is[1]. The questions put and answers given have to be faithfully recorded by the Judge. The Judge, however, has no right to question the Jury, demanding their reasons for the verdict[2].

Amending of verdict.—Where, by accident or mistake, wrong verdict is delivered, the jury may before or immediately after it is recorded, amend the verdict and it shall stand as ultimately amended[3].

Duty of the Judge after verdict.—If the Judge does not think it necessary to express disagreement with the verdict of the jurors or of the majority of them the Judge shall give judgment accordingly. If the accused is acquitted, the Judge shall record a judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on the accused according to law. If the Judge disagree with the verdict of the jurors or of the majority of jurors and is clearly of opinion that it is necessary, for the ends of justice, to refer the case to the High Court, he can do it under Section 307 Cr. P. C. The simple fact that the Judge entertains a different view will not make it obligatory on him to make a reference unless the verdict is manifestly wrong[4]. The High Court

1. Section 303 Cr. P. C.
2. *King Emp.*, v. *Derajtulla*, 34 C. W. N. 283.
   Arunachella v. *Emp.*, 13 Cr. L. J. 586 Mad.
3. Section 304 Cr. P. C.
4. *Emp.* v. *Swarnamayee*, 41 Cal. 621
   Emp. v. *Kondiba*, 28 Bom. 412.

will not ordinarily interfere unless the verdict is unreasonable and perverse[1].

Retrial of accused after discharge of Jury.—Whenever the jury is discharged, the accused is kept in custody and he is subsequently tried by another jury[2].

Judgment in the case of trial by assessors.—After the evidence is closed, the Court sums up the evidence for the prosecution and the defence and requires each assessor to state his opinion orally on all the charges on which the accused has been tried. The Judge records the opinion of the assessors and then delivers the judgment. The Judge is not bound to conform to the opinion of the assessors. If the Judge finds the accused guilty, (even against the opinion of the assessors), he passes a sentence according to law.

CHAPTER IX.

ADJOURNMENT AND COMPOUNDING OF OFFENCES.

Adjournment of a case.—If on account of the absence of a witness or any other reasonable cause, it becomes necessary to postpone the commencement of, or adjourn any enquiry or trial, the Court can do so and remand the accused (for a term not exceeding

1. *Emp.* v. *Dhunum*, 9 Cal. 53. *Emp.* v. *Pannalal*, 46 All 265. *Q. E.* v. *Dada*, 15 Bom. 452.
2. Section 308 Cr. P. C.

15 days at a time) or enlarge him on bail. The Court can also pass orders as to adjournment costs. If sufficient evidence is available against the accused and if it appears that further evidence can be had by remanding, the proper course is to remand the accused[1].

Whether a Criminal case can be adjourned pending decision of a Civil suit regarding the same subject-matter.—There is no hard and fast rule as to where or whether criminal proceedings should be stayed pending the determination of a civil suit. Each case must be decided on its own merits. One test is whether the prosecution is public or private. Where it is public, the Court, as a rule, would not stay criminal proceedings. Where it is private, there would not be same reluctance to interfere. The mere fact that some or all of the matters, material in issue in one case are the same as those in the other, cannot by itself be reason for staying the criminal proceedings[2]. If the object of the criminal proceedings be in reality to prejudice the trial in a civil suit or to coerce the accused to a compromise, the Criminal Court should, as a rule, postpone the criminal case[3].

Compounding of offences.—Section 345 Cr. P. C. lays down the law on the subject. The section being very important is quoted below :

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1. Section 344 Cr. P. C. *Narendra* v. *Emp.*, 36 Cal. 166.
2. *Gopal Chandra* v. *King Emp.*, 33 C. W. N. 969.
3. *Subramanian Chetti*, 2 Weir 415.
See Anna Ayyar v. *Emp.*, 30 Mad. 226. 6 Cr. L. J. 131
Jahangir v. *Framji*, 30 Bom. L. R. 962.

(1) **Compounding offences.**—The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table :—

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Uttering words etc. with deliberate intent to wound religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt.	323,334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341,342	The person restrained or confined.
Assault or use of criminal force.	352,355,358	The person assaulted or to whom criminal force is used
Unlawful compulsory labour.	374	The person compelled to labour.
Mischief, when the only loss or damage is loss or damage to a private person.	426,427	The person to whom the loss or damage is caused.
Criminal trespass. House trespass.	447 448	The person in possession of the property trespassed upon.
Criminal breach of contract of service.	490,491,492	The person with whom the offender has contracted.
Adultery Enticing or taking away or detaining with criminal intent, a married woman.	497 498	The husband of the married woman.
Defamation. Printing or engraving matter, knowing it to be defamatory. Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	500 501 502	The person defamed.

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for 7 years.	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(2) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table :—

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto
Voluntarily causing grievous hurt on grave and sudden provocation.	335	Ditto
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto

Offence	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	The person to whom hurt is caused.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining a person in secret.	346	Ditto
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound, by law or by legal contract, to protect.	418	Ditto
Cheating by personation.	419	Ditto
Cheating and dishonestly inducing delivery of property or the making alteration or destruction of a valuable security.	420	The person cheated.
Mischief by injury, to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeit trade or property mark.	486	Ditto
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it is intended to insult or whose privacy is intruded upon.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is under the age of 18 years or is an idiot or lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or as the case may be, before which the appeal is to be heard.

(5-A) A High Court acting in the exercise of its powers of revision under Section 439 may allow any person to compound any offence which he is competent to compound under this section.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(7) No offence shall be compounded except as provided by this section.

[*Note*:—From the above it will be found that no order from the Court is necessary for compounding the offences mentioned in the sub-section (1)[1]. An offence can be compounded only by the person mentioned in column 3 and by no body else. A case which can be legally compounded can be compromised even though sent up by Police[2]. The compromise petition, after it is filed, cannot be withdrawn[3]. After enactment of sub-section 5-A (by Act XVIII of 1923) a case may be compounded even on revision. A case can be compounded before judgment is pronounced[4]. In respect of offences mentioned in sub-section 2, a case cannot be compounded without the Court's sanction[5]. The accused is acquitted if the case is legally compounded.]

1. *Mahomad Kani* v. *Pattani*, 39 Mad. 946.
2. *Queen Emp.* v. *Nowabjan*, 10 Cal. 551.
3. *Mohamad Kani* v. *Pattani*, 39 Mad. 946.
4. *Aslam* v. *King Emp.*, 45 Cal. 816.
5. *Kumaraswami* v. *Kuppaswami*, 41 Mad. 685.

CHAPTER X.

PROCEDURE WHERE ACCUSED DOES NOT UNDERSTAND THE PROCEEDINGS.

If the accused, though not insane, cannot follow the proceedings, the proceedings relating to the inquiry or trial are submitted to the High Court with a report for necessary orders[1]. In the case of *Queen Empress* v. *Bouka*[2], the accused was deaf and dumb and was unable to understand the proceedings or to plead to the charge, it was *held* that the High Court might treat the proceedings before the sub-ordinate Court as amounting to sufficient trial and sentence the accused. In this case, however, their lordships gave the accused, a further opportunity to be heard, and ordered the Magistrate to proceed accordingly.

1. Section 341 Cr. P. C.
2. 22 W. R. 35.

CHAPTER XI.

OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE : CONTEMPT OF COURT.

Proceedings in case of offences affecting the administration of justice.—"(1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an enquiry should be made into the offence referred to in Section 195, Sub-Section (1) Clause (b) or Clause (c),

which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing, signed by the Presiding officer of the Court, and shall forward the same to a Magistrate of the First Class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate ;

Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the First Class.

(2) Such Magistrate shall thereupon proceed according to law, and as if upon complaint made, under Section 200.

(3) Where it is brought to the notice of such Magistrate, or any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at the judical proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided[1]."

Who can order prosecution.—In some old cases it was *held* that only the Judge who tried the case out of which the proceeding arose (*and not his successor-in-office*) could complain; but after the amendment of the section the power is conferred on the Court and not on any particular incumbent.

Delay.—Proceedings under this section should be taken without unreasonable delay, but reasonable delay is excusable[2].

What the Court is to find?—The Court need not come to any finding regarding the guilt of the person. If a *prima facie* case appear to have been made out, that will be enough[3].

Notice.—Notice of the preliminary enquiry may not be given[4] to the person against whom the pro-

1. Section 476 Cr. P. C.
2. *Begu* v. *E.*, 34 Cal. 551.
3. *Chamari Singh* v. *Public Prosecutor*, 4 Pat. 484.
4. *Bai Kasturbai* v. *Vanamali Das*, 49 Bom. 710.

ceedings are drawn up. The enquiry may be even *ex parte*; but generally an opportunity is given to the person to show cause. (*Durpa* v. *Bepin*, 15 C.W.N. 691).

Nature of enquiry.—The preliminary enquiry need not be an exhaustive one. It need be of a summary nature[1].

Evidence.—In the preliminary enquiry the Court can take evidence on oath[2]. The evidence need not be taken *extenso*, but only memorandum of oral evidence need be taken[3].

Where enquiry as to facts necessary.—Where the evidence on the record is enough to satisfy the Judge, he need not take further evidence in the enquiry, but where there is no such evidence an investigation into the allegation is necessary, *e. g.*, where a person reports obstruction to the execution of a process and the like; but even in such a case *ex parte* evidence *e. g.*, of the process-server etc. may be deemed sufficient[4]. In a case under Section 174 I. P. C., where service of summons is denied, the Court should take evidence and allow cross-examination of the witnesses[5]. Where a complaint is dismissed after examination of the complainant and on looking at the Police report, the Court should hold a preliminary enquiry and allow an opportunity

1. *Bhuban Chandra* v. *Emp.*, 31 C. W. N. 828 = 28 Cr. L. J. 783.
2. *Abdullah* v. *Emp.*, 37 Cal. 52
3. *Emp.* v. *Jogendranath*, 42 Cal. 240.
4. *Makhanlal* v. *Sarojendra*, 47 Cal. 741.
5. *Lokpal* v. *Emp.*, 19 A. L. J. R. 56.

to the complainant of proving the truth and *bonafides* of the complaint[1].

Discretion of the Court in making the complaint.—It is absolutely discretionary with the Court to make a complaint or not[2] as the responsibility of the prosecution rests entirely with the Court.

Complaint by Court.—The Court makes a complaint by forwarding a copy of the final order (signed by the Judge) passed in the preliminary enquiry. The Court should state, in the case of perjury, the particular statements which it considers to be false[3]. The complaint may not contain the sections under which the accused person is to be prosecuted. But it is better to mention the sections as far as possible[4].

When appeal is pending.—No action should ordinarily be taken during the period of appeal from the original judgment or order. When an appeal is filed it will be a matter of sound discretion to wait till the appeal is disposed of[5].

Sanction by superior Court.—A superior Court may complain under Section 476 Cr. P. C., when the subordinate Court failed to do so.

Appeal.—An appeal lies from an order, either refusing or directing prosecution, to the superior

1. *Queen Emp.* v. *Yendava*, 7 Mad. 190 (Judgment of Sir Charles Turner, Kt., C. J., and Muthusamiayyar, J.)
2. *Somavhai* v. *Aditvhai*, 48 Bom. 401.
3. *Kalisadhan* v. *Noni*, 52 Cal. 478.
4. *Ismail* v. *Emp.*, 26 Cr. L. J. 1115.
5. *Jadulal* v. *Lowis*, 34 Cal. 848.

Court[1]. Only one appeal is allowed and no second appeal will lie[2].

Limitation.—An appeal from an order of a subordinate Court to the District Judge should be filed within 30 days[3]. Limitation runs from the date on which the complaint is actually made[4]. Such an appeal may be heard by the Additional Judge, if transferred to him.

High Court's power of making a complaint.—The High Court on revision may make a complaint which the District Judge or a Subordinate Court might do[5].

Direct commitment by Civil or Revenue Court.—Without making a complaint under Section 476 Cr. P. C., a Civil or Revenue Court may itself complete the enquiry and commit the accused to the Court of Sessions or to the High Court[6]. If this is done the Civil or Revenue Court can exercise the powers of the Magistrate and the proceeding shall be conducted in the way it is done in a Magistrate's Court. *No appeal lies* from an order of commitment directly made by a Civil or Revenue Court[7].

Contempt of Court.—Where any offence as described in Section 175 (intentionally refusing to produce a document called for), Section 178 (refusing to take

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1. Vide Section 476 (B).
2. *Ahamadar* v. *Dipchand*, 55 Cal. 765=32 C. W. N. 164. *Moideen* v. *Miyassa*, 51 Mad. 777.
3. *Chandra Kumar* v. *Mathura*, 52 Cal. 1009.
4. *Fibholmes* v. *Crown*, Lahore 77. *Dagadebst* v. *Emp.*, A. I. R. 1928 (Bom.) 64.
5. *King Emp.* v. *Syedkhan*, 1925. 3 Rangoon 303.
6. Section 478 Cr. P. C.
7. *E.* v. *Rameshwarlal*, 49 All. 898.

oath), Section 179 (refusing to answer a question), Section 180 (refusing to sign a statement), Section 228 (international insult or interruption to public servant sitting in any stage of a judicial proceeding) of the Indian Penal Code is committed in the view or presence of a Civil, Criminal, or Revenue Court, the Court may detain the offender and before rising, sentence him to pay a fine not exceeding Rs. 200/- and in default of payment of fine, to simple imprisonment up to one month. This can be done even where the offender is a European British subject[1]. The offence must be committed during the course of a judicial proceeding, otherwise the offender cannot be dealt with in the summary way.

Procedure.—The Court is to record the particulars of the alleged offence, call upon the offender to show cause, and then record a finding and pass sentence. If the offender is punished under Section 228 I. P. C., the record should show the stage of the judicial proceeding interrupted, the nature of the interruption, and that the interruption was intentional, otherwise there can be no valid conviction[2]. Where the offence is of a serious nature the offender may be committed to a Magistrate having jurisdiction to try the case.

If the Local Government so direct, a Sub-Registrar or a Registrar may be deemed to be a Civil Court for the purpose of dealing with contempt Proceedings. The Court may excuse the offender on tendering a suitable apology.

1. Section 480 Cr. P. C.
2. *Jattumal* 29 Cr. L. J. 880.

Witness refusing to answer questions etc.—If any witness refuses to answer a question or to produce a document the Court may commit him to the custody of an officer of the Court for any term not exceeding 7 days[1].

Appeal.—The person convicted in a contempt Proceeding may appeal to the Court to which the decree or orders of such Court are appealable. An appeal from conviction by a Sub-Registrar, when such officer is also a judge of the Civil Court lies to the District Judge. If convicted by a Judge of a Small Causes Court in a Presidency town, an appeal lies to the High Court.

CHAPTER XII.

MAINTENANCE PROCEEDINGS.

Maintenance of wives and children : Who can order payment of maintenance : Enforcement of order.—If any person having sufficient means, neglects or refuses to maintain his wife, legitimate or illegitimate child as are unable to maintain themselves, the District Magistrate, Presidency Magistrate, Sub-divisional Magistrate or a Magistrate of the First Class may order such person to pay a monthly allowance at the rate not exceeding Rs. 100/- to the wife or the child. The order directing payment of maintenance, may

1. Section 485. Cr. P. C.

be enforced by imprisoning the person for a term up to one month for each month's default.

Wife—who cannot claim maintenance.—A wife, if she refuses to live with her husband without reasonable cause or if she lives in adultery, cannot claim maintenance.

Cancellation or modification of orders.—On sufficient cause being shewn, any order for payment of maintenance may be varied or cancelled.

Procedure: Recording of evidence: Costs.—Evidence in a maintenance proceeding is taken in the presence of the husband or the father or his pleader. Evidence is recorded in the manner prescribed in the case of Summons cases. The Court can allow costs in maintenance proceedings.

Where the application is to be made.—Proceedings for maintenance against any person may be started in a District where he resides, or is or where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

Poverty of father or husband.—A Magistrate cannot refuse to order maintenance against a man of slender means, but should order payment of a small amount every month. An able-bodied man who has no disease is presumed to have sufficient means[1].

Proof of marriage.—The wife must prove her marriage with her husband before she can claim maintenance[2].

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1. 1911 U. B. R. Ist qr. 90.
2. *Gulab Das*, 16 Bom. 269.

The nature of proceedings.—These proceedings are of civil nature and the person against whom the proceedings are started is a competent witness in the case on his own behalf[1]. The features of the child and the defendant cannot be compared or taken into consideration by the Magistrate, in a maintenance proceeding started by or on behalf of a child.

Illegitimate child.—An illegitimate child, unable to support itself, can claim maintenance.

Wife : Can she get maintenance if she can earn ?—A wife is entitled to get maintenance even if she can earn by doing work. (10 Burma Law Reports 166).

Amount.—Amount of maintenance should be reasonable.

Offer of maintenance to wife.—If the husband undertakes to maintain the wife, he must maintain her with the considerations due to a wife[2].

Can a wife refuse to live with her husband ?—A Christian wife may refuse to live with her husband, if the latter become a Hindu and marry for the second time ; if the husband is guilty of adultery, the wife is not bound to live with him[3]. Where the husband drives the wife away after severely beating her, she can claim maintenance[4]. A husband offered to maintain his wife in his house, but the offer was refused on the ground that the husband had, without

1. *Noormahomad* v. *Bismollah*, 16 Cal. 781. This is Calcutta view—*Contra*, *Appadu* v. *Rayana*, 39 Mad. 472.
2. *Mannatha*, 17 Mad. 260. Read, however, *Gulab Das*, 16 Bom. 269.
3. *Gantapalli* v. *Gantapalli*, 20 Mad. 470.
4. *Rajpati* v. *Deoli*, 46 All. 877.

sufficient cause, married a second wife. *Held*, that the fact that the husband married for the second time was not sufficient reason within the meaning of Section 488 clause 4, Cr. P. C., and that the wife was not entitled to get a separate maintenance[1].

Wife committing an isolated act of adultery.—If the wife commit an isolated act of adultery but subsequently leads a chaste life, she is entitled to maintenance. Akiman, J., *held* in the case of *Kalu* v. *Kaunsilia*[2]—that one lapse of virtue does not disentitle a wife to receive separate maintenance. It was *held* that the words "living in adultery" in Section 488 Cr. P. C, means a course of adulterous conduct more or less continuous.

Can the order for maintenance be enforced after the death of the person : Civil remedy : Difference.—An illegitimate child is entitled to maintenance from his father, under Section 488 Cr. P. C ; such a claim can only be enforced during the life-time of his father. The right of the illegitimate child to get maintenance terminates with the death of the father. But where there is statutary right to claim maintenance against a husband under the common law, this right can be enforced by a civil action against the person during his life time or against his estate after his death. But a person (*e.g.* an illegitimate son) who has no such statutory right to bring a civil action, can claim maintenance only under Section 488 Cr. P. C.[3].

1. *Arumugam* v. *Tulukanam*, 7 Mad. 187=2 Weir 640.
2. 26 All. 326.
3. *Lingappa* v. *Esudarsan*, 27 Mad. 13.

Civil suit after an order under Section 488 Cr. P. C.— The Magistrate's order does not take away the jurisdiction of the Civil Court[1].

Subsequent effect of a Civil Court decree for restitution of conjugal rights :—Parsons, C. J., in the case of *Re: Badaki Das*[2], *held*, "that an order of a Civil Court for restitution of conjugal rights supersedes any previous order of a Magistrate for maintenance. If the wife, after the decree, persist in refusing to live with her husband.........the Magistrate ought to cancel his order or rather to treat it as determined".

CHAPTER XIII.

RIGHT TO BE DEFENDED.

Right of a person against whom proceedings are instituted and of an accused in any enquiry or trial, to be defended.—Section 340 Cr. P. C., gives the person such a right. He can, as a matter of right, claim to be defended by a pleader. Previously, a person against whom a proceeding under Section 110 Cr. P. C., had been started could not defend himself by a pleader;

1. *Deragi* v. *Marati Karim*, 30 Mad. 400=2 M. L. T. 344=7 Cr. L. J. 235.
2. 23 Bom. 484.

but such a right has been given by the amended Section 340 Cr. P. C.

Right of Pleader or Muktear to appear before a Magistrate in a trial or in an enquiry.—A pleader has such a right under Section 340 Cr. P. C. Formerly, the Muktear's right was a limited one. Under Sections 4(r) and 340 of Cr. P. C. as amended by Act XXXV of 1923, a Muktear now comes within the definition of a pleader and has a right to appear for any person accused of an offence in a Court or during an investigation.

CHAPTER XIV.

TRIAL AND PROCEEDINGS AGAINST EUROPEAN BRITISH SUBJECTS.

Limit of punishment.—Under the old law, the Magistrate of the First Class could sentence a European British subject to 3 months' R.I., and impose a fine of Rs. 100/- ; a District Magistrate could award 6 months' R. I., and impose a fine of Rs. 200/- and the Sessions Court—one year's imprisonment and unlimited fine. These restrictions were removed by the Criminal Law Amendment Act XXII of 1923. Under the present law (vide Section 34-A Cr. P. C.) a Court of Session can pass sentence of death, penal servitude, or imprisonment with or without fine or of fine on a

European British subject. The District Magistrate or a Magistrate of the First Class may sentence any European British subject to 2 years' imprisonment or fine, which may extend to Rs. 1000/- or both. A Magistrate of Second or Third Class has no power to enquire into and try any offence punishable otherwise than with fine not exceeding Rs. 50/- against a European British subject who claims to be tried as such[1]. The law does not authorise any Court to punish any European British subject with whipping. For procedure in jury trial of European British subjects, see Section 275 of the Criminal Procedure Code. When the accused claims to be tried as a European British subject in a case where the complainant is an Indian British subject, the Magistrate is to enquire and hold if the claim can be rightly given effect to. If the finding be against the accused,—he may appeal to the Sessions Judge and the decision of the Sessions Judge is final in the matter. No special procedure is prescribed for a case where both the accused and the complainant are European British subjects.

Formerly Security proceedings under Sections 109 to 118 of the Criminal Procedure Code could not be taken against a European British subject. But after the passing of the Ammending Act XXII of 1923, Security proceedings can be started against a European British subject as well.

1. See Section 29-A of the Criminal Procedure Code.

Onus.—Where the accused claims to be a European British subject, it is for him to prove it[1]. A claim on the ground of status may be put forward before the committing Magistrate at any time before commitment[2].

Waiver.—A European British subject can waive his right to be tried as such. Failure to make a claim amounts to waiver of such right[3].

In the case of a proposed joint trial of a European British subject with an Indian British subject, (see Section 285-A of the Criminal Procedure Code), they can claim to be tried separately by jurors and assessors who are their own countrymen.

Special provisions relating to cases in which both European and Indian British subjects are concerned.—When it is proved that the complainants and the accused persons, or any of them are respectively European and Indian British subjects, the accused can claim to be tried under the special provisions contained in Chapter XXXIII Cr. P. C. If the accused claim to be tried under the said Chapter, the Magistrate will hold an enquiry under Section 443 Cr. P. C., and if he find against the accused, he can prefer an appeal to the Sessions Judge. If the Court find that the accused is entitled to be tried under the special provisions, then in a Summons case the Magistrate directs the case to be tried by a

1. *Re. Turnbull,* 2 Weir 11.
2. *Emp.* v. *Harendra,* 51. Cal. 980.
3. *Alexander* v. *Ruffe,* 13 Cr. L. J. 197.
Barindra Kumar v. *Emp.,* 37 Cal. 467.

Bench of two Magistrates, one of whom shall be a European, as provided in Section 445 Cr. P. C. In a Warrant case, the Magistrate commits the accused for trial to the Court of Session, where the accused will be tried by a jury, majority of which will be either Indians or Europeans or Americans, according to the nationality of the accused. Supplementary provisions as to the claim of the accused to be tried as a European British subject or as an American, are contained in Sections 528 (A) to 528 (C) Cr. P. C. The omission on the part of the accused to claim the privilege of the provision of 528 (A) Cr. P. C., does not debar him from urging in support of his application for leave to appeal under Section 449, sub-section 1, clause (c) that the conditions mentioned in clause (a) of Section 443 (1) exist, vide *In the matter of T. C. Martindle* v. *Emp*[1].

Appeal.—See Section 449 Cr. P. C.

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1. 29 C. W. N. 47 = 52 Cal. 347.

CHAPTER XV.

TRIAL OF LUNATICS.

Trial of lunatics.—When a Magistrate, holding an enquiry or trial, has reason to believe that the accused is of unsound mind, and incapable of making his defence, such person is examined by the Civil Surgeon of the District or other Medical Officer as the Government may direct. The Magistrate then examines the doctor as a witness. The Court can also consider the circumstances under which the alleged offence was committed, to see if the circumstances suggest a doubt regarding the prisoner's state of mind at the time. Witnesses may also be examined regarding the ordinary habits, behaviour and demeanour of the accused both before and immediately after the commission of the offence[1]. If it transpires that the accused is incapable of making his defence, the Magistrate is to postpone further proceedings in the case. It is the duty of the Magistrate, when a plea of lunacy is taken, to make an enquiry and come to a finding at the very outset. If the Magistrate fails to do it, the subsequent trial or enquiry will be bad in law[2]. If after the commitment, and before the trial in the Sessions Court begins, it is alleged that the prisoner is of unsound mind and consequently incapable of making his defence, then evidence is adduced and the

1. *Vaimbilee v. Empress*, 5 Cal. 826 (Judgment of Prinsep, JJ.)
2. *Jhabbu*, 42 All. 137.

question of lunacy is tried by the judge and the jury at the very beginning[1]. The trial will proceed where the jury find that the accused is capable of making his defence.

Onus.—When a plea of lunacy is taken, the onus lies on the prosecution to prove that the accused is of sound mind[2]. If it is found that the accused is incapable of making his defence, the Magistrate or the Judge may release the accused pending the investigation or trial and pass necessary orders regarding the custody of the lunatic prisoner. If the accused be subsequently found to be in a position to make his defence—the enquiry (before the Magistrate) or trial (before the Magistrate or the Sessions Judge) may be resumed. If any person is acquitted on the ground of lunacy the Court records a finding whether the accused committed the act complained of or not

A lunatic may be delivered to the care of his relatives or friends on the terms mentioned in Section 475 Cr. P. C.

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1. *Bheeku*, 19 W. R. 15.—Read Section 464 Cr. P. C.
2. *Sibdas* v. *Emp.*, 51 Cal. 584.

CHAPTER XVI.

RECORDING OF EVIDENCE : EXAMINATION OF ACCUSED : JUDGMENT : SENTENCE : NOTIFYING ADDRESS : YOUTHFUL OFFENDER : FIRST OFFENDER AND OLD OFFENDER.

The mode of recording evidence in enquiry and trial.—Evidence in an enquiry or trial is taken in presence of the accused. In Summons cases outside the Presidency towns, the Magistrates of the First and Second Class make a memorandum of the substance of the evidence of each witness. In all trials before the Courts of Sessions and in all enquiries preliminary to commitment, and in Warrant cases evidence of each witness is taken down in writing in the language of the Court or in English. Evidence is recorded, not in the form of questions and answers but in the form of a narrative ; but important questions and answers are noted. Evidence is then read over and explained to the witness and corrected if necessary[1] and signed by the Sessions Judge or the Magistrate. It is not enough if the Magistrate hands over the deposition to the witness to read it himself[2]. If the deposition is

1. Vide Chapter XXV Cr. P. C.
2. *King Emperor v. Jogendra*, 42 Cal. 240.

recorded in a language which the witness does not understand, it is interpreted to him. When evidence is given in a language not understood by the accused, it is interpreted to the accused in open Court. In every case tried by a Presidency Magistrate in which an appeal lies, the Magistrate is required to take down the evidence in his own hand or cause it to be taken down in writing from his dictation in open Court. The Court can, during the trial, make notes regarding the demeanour of any witness.

Examination of accused by the Court : Filing of written statement by accused —There is no provision in law for putting in written statement of an accused in Court, but there is the practice of filing written statement on behalf of the accused[1]. Even where written statements are accepted, they cannot ordinarily be allowed to dispense with the examination of the accused under Section 342 Cr. P. C[2]. Under this section the Court may, at any stage of an enquiry or trial, put questions to the accused, for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him. The questions put, however, must be strictly limited to the above purpose. The Court can question the accused only after the examination of the witnesses for the

1. *Deputy Remembrancer* v. *Mutukdhari*, 20 C. W. N. 128. *King Emp.* v. *Dwijendra*, 19. C. W. N. 1043.
2. *Amritalal* v. *Emp.*, 42 Cal. 957=19 C. W. N. 676=29 I. C. 513. Read however *Bhagabat* v. *Emp.*, 4 Pat. 331. (W. S. filed—accused was not examined).

prosecution[1]. The Court cannot put questions to the accused to fill up gaps in the prosecution evidence[2]. If there be no substantial compliance with the provisions of Section 342 Cr. P. C., the trial is bad in law[3]. So, if the Court fails to examine the accused after the close of the examination of the prosecution witnesses and before the defence witnesses are examined, the conviction at the trial is liable to be set aside.

The examination of the accused by a Magistrate or a Sessions Judge should be made in conformity with the Section 364 Cr. P. C., in the language in which the accused is examined or if that be not practicable, in the language of the Court, or in English. All questions put to the accused and answers given are to be faithfully recorded. The statement will be then read over and explained to the accused and signed by the accused and the Magistrate : and the Court is required to certify that the statement recorded contains a full and true account of what the accused stated.

Where the Magistrate himself cannot take down the statement, he can order a statement to be taken down by an officer of the Court. But the Judge or the Magistrate, in such a case, should take down a memorandum of the statement himself. If the accused

1. *Q.* v. *Har Govinda*, 14 All. 242=12 A. W. N. (1892) 83.
King Emp. v. *Bhutnath*, 7 C. W. N. 345.
2. *Basanta Ghatak* v. *Q.*, 26 Cal. 49.
K. Emp. v. *Alimuddi Naskar*, 52 Cal. 522=29 C. W. N. 231=26 Cr. L. J. 631.
3. *Sailendra* v. *Emp.*, 38 C. L. J. 175.

is unable to write, his mark or thumb impression should be taken. But if he can write, the thumb impression is not sufficient[1].

Confession of accused.—The confessions are recorded under Section 364 Cr. P. C. If the Magistrate fails to comply with the formalities he may be examined to cure the defect under Section 533 Cr. P. C. (*Emp.* v. *Deo Dat, 45 All. 166.*)

Judgment.—The judgment in every trial shall be delivered in open Court or its substance shall be explained in the presence of the accused or his pleader. Where a Magistrate died after pronouncing the sentence and before delivering the judgment, a retrial was ordered[2].

Where a judgment is lost, a fresh judgment is to be recorded from memory[3]. The judgment should contain all the points for decision and reasons for decisions and clear findings regarding each offence and head of charge. The judgment should be recorded by the Judge or the Magistrate or it may be taken down from his dictation. The judgment should be signed and dated by the Judge or the Magistrate himself. In Sessions cases, the Judge prepares the heads of the charges to the jury and records their verdict and has to record an order of conviction or acquittal, as the case may be. A Presidency Magistrate, instead of recording a full judgment, records the following particulars only :—

1. *Sadananda Pal* v. *Emperor*, 32 Cal. 550. =2 Cr. L. J. 405.
2. *Q. E.* v. *Kamthia*, 1 Bom. L. R. 160.
3. *Kamakshamma* v. *Emperor*, 38 Mad. 498.

(a) the serial number of the case ;

(b) the date of commission of the offence ;

(c) the name of the complainant (if any) ;

(d) the name of the accused person and (except in the case of European British subject) his parentage and residence ;

(e) the offence complained of or proved ;

(f) the plea of the accused and his examination (if any) ;

(g) the final order ;

(h) the date of such order ; and

(i) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees or both, a brief statement of the reasons for conviction.

Accused to get copies of judgment free of costs.—A copy of judgment, when applied for by the accused, is supplied to him (other than in Summons cases) free of costs. In a trial by jury in a Court of Sessions, the accused is entitled to get a copy of the heads of the charges to the Jury ;

Death sentence : Appeal.—When death sentence is passed by a Sessions Court, the Court shall inform the accused that he can prefer an appeal to the High Court within seven days (excluding the time for getting copies). The sentence of death requires confirmation by the High Court. After the proceedings of the case are submitted, the High Court may confirm the sentence or annul, the conviction and acquit the accused person, or pass any other sentence.

Execution of the sentence.—The sentence passed, by

the Court is executed according to law. The death sentence is carried into effect after confirmation by the High Court. The High Court can postpone the execution of the sentence of death passed on a pregnant woman or commute the sentence to transportation for life. A fine imposed may be levied by attachment and sale of moveable properties of the offender. If the sentence directs imprisonment in default of payment of fine and if the offender has undergone the whole period of such imprisonment, the Court may not issue a warrant for the realisation of the fine except in special cases. Where the Court issues a warrant to the Collector of the District for realising the fine by execution against moveable and immoveable properties of the offender, the warrant is treated as a decree[1], and processes are issued as in the Civil Court execution proceedings. Where the offender is sentenced to pay a fine only and to imprisonment in default, the Court can allow 30 days' time under Section 388 Cr. P. C., for payment of the fine or direct payment by instalments and can suspend the execution of the sentence of imprisonment by taking a bond from the offender for his appearance and payment.

Whipping.—When the accused is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or is sentenced to whipping in addition to imprisonment, the whipping is not inflicted until fifteen days from the date of

1. Vide Section 386, Sub-sec. 3.

the sentence, or if an appeal is preferred until the sentence is confirmed by the Appellate Court.

Where there can be no order as to whipping.—No accused is sentenced to whipping in addition to imprisonment where the term of imprisonment is less than 3 months. In no case it can exceed 30 stripes and in the case of persons under 16 years of age it cannot exceed 15 stripes. No female can be sentenced to whipping. Whipping is not to be inflicted if the offender is not in a fit state of health.

Sentence on offender who is undergoing another sentence.—The second sentence of imprisonment commences at the expiration of the first sentence unless the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Where, however, a person has been sentenced to imprisonment under Section 123 Cr. P. C., for default in furnishing security and is undergoing that sentence and he is sentenced to imprisonment for an offence committed prior to the order passed in the case under Section 123 Cr. P. C., the latter sentence is to commence immediately[1].

Youthful offender: How dealt with.—When any person under the age of fifteen, is sentenced by any Criminal Court to imprisonment, the Court may direct under Sec. 399 Cr. P. C., that such person, instead of being imprisoned in a Criminal jail, shall be confined in any Reformatory (established by the Local Government as a fit place for confinement), in which

1. Section 397 Cr. P. C.

there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein. All persons confined under Section 399 Cr. P. C., shall be subject to the rules so prescribed. This section shall not apply to any place in which the Reformatory Schools Act, 1897 is for the time being in force[1].

First offenders : how may be dealt with.—When any person, not under twenty-one years of age, is convicted of an offence punishable with imprisonment for not more than seven years, or any person under twenty-one years af age or any woman is convicted of an offence, not punishable with death or transportation for life and no previous conviction is proved against the offender, if it appears to the Court, before which he or she is convicted, (regard being had to the age, character or antecedents of the offender, * * * * and to the circumstances under which the offence was committed) that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear or receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour[2]. A first offender

1. Vide Section 399 Cr. P. C.
2. Section 562 Cr. P. C.

may, in certain cases, also be convicted and released with admonition. Section 562 can be applied only in case of a first offender with good antecedents and where extenuating circumstances exist. The Magistrates have been empowered to give men of character, specially young men who succumb to sudden temptation, a chance to lead a better life. The section applies whether an offence is punishable under the Indian Penal Code or some other Act. Before the amendment, the old section applied only in case of an offence under the Indian Penal Code. An offender, dealt with under this section, should not be sentenced to imprisonment on failure to furnish security[1].

Appeal.—An order passed under Section 562, is appealable[2], even if passed in a Summary trial[3].

Order for notifying address of old offenders.—Under Section 565 Cr. P. C., a Session Judge, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of First class may in certain cases, on second conviction, at the time of passing sentence of transportation or imprisonment on an accused person, also order that his residence and any change of or absence from such residence after release, be notified in the manner prescribed for a term not exceeding five years from the date of the expiration of such sentence[4]. Any person, acting in

1. *Nasu Meah* v. *King Emperor*, 2 Rang. 360.
2. *Bahadur Mollah* v. *Ismail*, 29 C. W. N. 151=52 Cal. 463: 26 Cr. L. J. 455.
3. *Emp.* v. *Hiralal*, 46 All. 828.
4. Cr. P. C. Section 565 (Clause 2).

violation of the order, is liable to be punished. (Vide Clause 5, Section 565 Cr. P. C.)

Procedure where the sentence of the accused is liable to enhancement on the ground of previous conviction.—In a trial by Jury or with the aid of assessors where there is a charge for an offence and a further charge that the accused is, by reason of a previous conviction, liable to enhanced punishment, such a charge is not read out in Court at the outset, nor is the accused asked to plead thereto, nor is the same mentioned by the prosecution unless and until the accused has been convicted of the main offence by the jury or the assessors have given their opinion[1]. As the jury must not know anything about the previous conviction, the judge in his *charge* has to refrain from referring to it[2]. The accused may admit his previous conviction. If he does not do so, the prosecution has to prove the same and also to establish the identity of the accused in connection with the previous case. Simple production of the copy of the record of conviction in the previous case is not enough. Kemp and Glover JJ., have *observed* that sworn testimony of a witness is necessary to connect the accused with the previous conviction[3]. (See Part III Chapter I-A).

1. Section 310 Cr. P. C.
2. *Chundi Perugadu*, 2 Weir 393. *Roshun* v. *Emp.*, 5 Cal. 768.
3. *Q. Emp.* v. *Sheikh Ramzan*, 15 W. R. 53 (Cr.).

CHAPTER XVII.

LIMITATION.

The Law of Limitation as applicable to appeals in criminal cases.—The articles 150 to 154, 155, 157 of Schedule 1, Division II of the Indian Limitation Act prescribes periods for preferring appeals from judgments and orders of Criminal Courts. Section 4 provides that where the period of limitation prescribed for any appeal expires on a day when the Court is closed, the appeal may be preferred on the day the Court reopens. The Limitation Act applies to appeals preferred under the Criminal Procedure Code. In cases of appeals provided for in the Local Acts, the question arose as to whether the appellant could get advantage of the sections of the Limitation Act, and the different High Courts took different views. The recent amendment of Section 29 of the Limitation Act by Act X of 1922 settled the law on the subject. The amended section provides that,—"The provision contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as and to the extent to which they are not expressly excluded by such Special or Local Law, and the remaining provisions of this Act shall not apply." Section 5 of the Limitation Act provides that any appeal or any other application, which may be made by or under any Enactment for the time being in force, may be admitted

after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court, in ascertaining or computing the prescribed period of limitation, may be sufficient cause within the meaning of Section 5.

Computation of period of limitation.—In computing the period of limitation prescribed for any appeal or application, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the judgment, or order appealed from shall be excluded[1].

Time requisite for obtaining a copy.—In determining the "*time requisite*" referred to in Section 12 of the Limitation Act, the conduct of the appellant must be considered. No period can be regarded as requisite under the Act which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the order appealed against[2].

"*Requisite*" means properly required and throws on the appellant the necessity of showing that no part of the delay is due to his default[3].

1. Section 12 Limitation Act.
2. *Pramathanath Roy* v. *The Hon. William Aurther Lee*, 27 C. W. N. 156 = 49 Cal. 999 (P. C.)
3. *Jijibhoy N. Surty* v. *T. S. Chettyar*, 32 C. W. N. 845 (P. C.) = 6 Rang. 302 (1928) P. C.

It is not necessary that the party himself should apply for the copy. Any one on his behalf can make the application[1].

In computing the period of limitation prescribed for an appeal from a sentence of a Criminal Court, the time taken in forwarding an application by the prisoner for a copy of the judgment and in transmitting the same from the Court to the jail must be excluded. In the case of Jail appeals, presentation of the petition of appeal to the officer-in-charge of the Jail is, for the purpose of the Limitation Act, equivalent to presentation to the Court[2].

Limitation for starting prosecution.—On this point Ranade, J., in the case of *Q. E.* v. *Nageshappa Rai*[3], observed as follows :—"The principles on which rules of limitation are framed, have no natural application to prosecutions which are, in theory at least, instituted by the Crown. The general law of limitation and its schedules are chiefly intended for civil matters. Of course, for the greater protection of subjects, certain periods are laid down in Special Laws for prosecutions to be instituted under them." The Allahabad High Court has expressly ruled that rules of limitation are foreign to the administration of criminal justice and that it is only by express Statutory provisions that such rules can be made

1. *Aminuddin* v. *Pyari*, 43 Mad. 633 ; *Rudra* v. *Raghuraj*, 23 I. C. 209 ; *Ramkrishna* v. *Kashi Bai*, 29 All. 264.
2. *Q. Emp.* v *Lingaya*, 9 Mad. 258=1 Weir 789.
3. 20 Bom. 543.

applicable to criminal proceedings[1]. So there is no limitation for starting a criminal case except where by some Special or Local Act, prosecution under that Act is required to be started within the period prescribed in that Act. But invariably prosecution which is not started immediately after the occurrence is looked down upon with a degree of suspicion. Even if the prosecution be not started immediately after the occurrence, the First Information should be lodged at the thana, as soon as possible after the occurrence. In a rape case, where there was delay in lodging the F. I. R. it was *held* that there should not be conviction of the accused[2].

Revision : Limitation.—According to the practice prevailing in the Calcutta High Court, a revision petition should be filed within 60 days from the date of the order, exclusive of the time necessary for getting copies. This rule, however, is relaxed in exceptional cases[3]. In Allahabad High Court, the practice is to file a revision petition within a reasonable time[4]. This seems to be the practice of other High Courts also[5].

1. *Q. Emp.* v. *Ajudhia Singh*, 10 All. 350.
2. *Inder Singh* v. *Emp.*, 9 Lah. L. J. 384.
3. *Khetra Mohan* v. *Darpa Narain*, 43 Cal. 1029.
4. *Emp.* v. *Narain*, 27 Cr. L. J. 1021 (All.).
   Q. v. *Ram Narain*, 8 All. 514.
5. *Avadh* v. *Dwarka*, I P. L. J. 165 ; *E.* v. *Devappa*, 43 Bom. 607.

SCHEDULES.

No. of Art.	Description of Appeal.	Period of limitation.	Time from which period begins to run.
150.	An appeal from a sentence of death passed by a Court of Session.	7 Days.	The date of the sentence.
150-A.	Under the Code of Criminal Procedure, 1898, from a finding rejecting a claim under Section 443 of that Code.[1]	7 Days.	The date of the finding.

Note :—Section 443 Cr. P. C., finds place in chapter XXXIII relating to cases in which European and Indian British subjects are concerned[1].

No. of Art.	Description of appeal.	Period of limitation.	Time from which period begins to run.
154.	An appeal to any Court other than a High Court.	30 Days.	The date of the sentence or order appealed from.

Note :—Sections 5 and 12 of the Limitation Act apply to this article (for jail appeals see *Q. Emp.* v. *Lingaya*, 3 Mad. 258). This article applies to appeals presented before the Sessions Judge and the District Magistrate. It should be remembered that the application under Sections 517 and 520 for restoration of property is not an appeal, so this article does not apply to such a case[2].

1. See Criminal Law Amendment Act (Act XII of 1923).
2. *Kanshi Ram* v. *The Crown*, (1922) 4 Lahore 49.

No. of Art.	Description of appeal.	Period of limitation.	Time from which period begins to run.
155.	An appeal to a High Court except in cases provided for by art. 150 and art. 157.	60 Days.	The date of the sentence or order appealed from.

Note.—This article applies to any appeal to the High Court under the Cr. P. C., excepting the cases falling under Arts. 150 and 157. Appeals from judgments of High Court Criminal Sessions to the High Court are governed by this article. Sections 4, 5 and 12 of the Limitation Act apply to this article.

No. of Art.	Description of appeal.	Period of Limitation.	Time from which period begins to run.
157.	An appeal from an order of acquittal.	6 months.	The date of the order appealed from.

Note.—No court, excepting the High Court, can entertain an appeal from an order of acquittal. Such appeals are preferred by the Local Government.

CHAPTER XVIII.

ARRANGEMENTS OF RECORDS OF CRIMINAL CASES.

Record of a Summons case.—It contains files "A" & "B",

The following papers are kept in file "A":—

(1) Title page.

(2) Table of contents.

(3) Order sheet.

(4) Statement, if any, of the accused.

(5) Depositions of witnesses.

(6) List of articles, connected with the offence charged, which cannot be attached to the record.

(7) Examination of the accused.

(8) Examination of the witnesses for the defence in chronological order.

(9) Judgment, finding and sentence.

(10) Papers showing how the proceedings were initiated.

(11) Copy of the judgment, or order of the Appellate or Revisional Court.

(12) Warrant returned by the jail authorities after execution of sentence.

File "B" contains all other papers.

Record of an inquiry prior to commitment to the Court of Session.—This record also contains two files—"A" and "B".

The file "A" contains the following papers :—

(1) Title page.

(2) Table of contents.

(3) Order sheet.

(4) Papers showing how the proceedings were initiated, the petition of complaint, the first information, report of the police under Sec. 190 (1) (c) Cr. P. C., on which the proceedings were taken, final report of the police.

(5) Deposition of witnesses.

(6) Report of the chemical examination.

(7) List of articles connected with the offence, proved and exhibited.

(8) Examination, if any, of the accused.

(9) Order of the Magistrate.

(10) List of witnesses put in by the accused.

(11) Commitment order.

The File "B" contains all other papers.

Record of a Warrant case.—It contains files "A" and "B".

The following papers are kept in file "A" :—

(1) Title page.

(2) Table of contents.

(3) Order sheet.

(4) Papers showing how the proceedings were initiated.

(5) Final report of the police under Sec. 173 of the Cr. P. C.

(6) Deposition of witnesses for the prosecution.

(7) Report of the Chemical Examiner.

(8) List of articles connected with the offence.

(9) The charge.

(10) Documents, connected with the offence charged.

(11) Confession, if any.

(12) Examination of the accused under Sec 342 Cr.P.C. and any written statement, filed by the accused during the trial.

(13) Deposition of the witnesses, examined for the defence.

(14) Judgment, finding and sentence.

(15) Warrant returned by the jail authorities after execution of sentence.

The following papers are kept in file "B" :—

(1) Title page.

(2) Table of contents.

(3) All other papers not included in file "A"—except exhibits.

Exhibits :—The Court marks documents which are admitted on behalf of the prosecution, with figures in the order in which they are admitted such as : *EX.* 1, *EX.* 2, *EX.* 3, etc., etc., for the Prosecution and the documents admitted on behalf of the defendant with capital letters, thus : *EX.* A, *EX.* B, *EX.* C, etc., etc.

When a number of documents of the same nature are admitted, the whole series shall bear one number or capital letter, a small number, or small letter being added to distinguish each paper of the series thus : *EX.* 1, $1(^{1})$, $1(^{2})$, $1(^{3})$ and *EX.* A(a), A(b), A(c), etc.

PART II-A.

Practice and Procedure (Contd.)

CHARGE, BAIL, WITHDRAWAL FROM PROSECUTION, SECOND TRIAL, TRANSFER OF CASES AND PROCEDURE WHERE THE MAGISTRATE CANNOT LEGALLY TRY OR DEAL WITH THE CASE.

14.

PART II-A.

CHAPTER I.

CHARGE.

What the charge should contain : Alteration : Amendment : Addition of : New trial.—Every *charge* shall state the offence with which the accused is charged. If the law, which defines the offence, gives it any specific name, the offence may be described in the *charge* by that name only.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the *charge*. If the accused is liable to enhanced punishment on account of his previous conviction, a charge on this head may be framed stating the fact of the previous conviction. In case of rioting—the common object of the unlawful assembly should be mentioned[1]. A charge should be framed, as far as possible, in the language of the section[2].

Sufficient particulars of the previous conviction should be mentioned so that the accused may understand why he is liable to enhanced punishment. The *charge* shall contain such particulars as to the time and place of the alleged offence, or the thing (if any) in respect of which it was committed, as are

1. *Buddhu* v. *Lachminia*, 9 C. W. N. 599.
2. *Amrita Lal* v. *K. Emp.*, 42 Cal. 957.

reasonably sufficient to give the accused notice of the subject with which he is charged.

The *charge* shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose. Where *intention* forms the gist of the offence, it should be mentioned in the charge. Error in the charge will not vitiate the trial unless the accused is in fact misled thereby. The test is, whether the accused has been able to conduct his defence properly. Any Court may alter or add to any charge at any time before judgment is pronounced, or in the case of trials before the Court of Session or High Court, before the verdict of the Jury is returned or the opinions of the Assessors are expressed. But a charge (which will not be supported by the evidence taken by the Magistrate) cannot be added by the Sessions Court[1]. Every alteration of, or addition to charge shall be read and explained to the accused[2]. The Court should see that the accused is not prejudiced by the amendment. If the Court think that the accused will not be prejudiced, it may proceed with the trial as if the new or altered charge had been the original charge[3]. If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor, the Court may either direct a new trial or adjourn the trial for such period as may be

1. *Ankamma* v. *E.*, 1932 M. W. N. 1162=66 M. L. J. 6.
2. Section 227 Cr. P. C.; *Gulzari* v. *E.*, A. I. R. 1933 Oudh 375.
3. Section 228 Cr. P. C.

necessary[1]. In the new trial, witnesses may be recalled and examined with reference to the altered or the new charge.

Joinder of charges.—For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Section 233 Cr. P. C.

This law has been enacted just to help the accused so that he may not be confounded, having to meet several unconnected charges in one trial.

When two offences have no connection with each other they are deemed to be distinct offences. Offences falling under different sections of the I. P. C., are distinct offences. Offences committed on different occasions, though of the same nature are distinct offences. Misappropriations of money on different dates are distinct offences. For distinct offences though committed in the same transaction, separate charges should be framed. It may be, that those charges will be tried togather under Section 233.

Three offences of the same kind within a period of one year may be charged together in one trial[2].

Trial for more than one offence.—If, in one series of acts so connected as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried, at one trial, for every such offence. If the acts alleged

1. Section 229 Cr. P. C.
2. *Surendra Nath Goswami* v. *Emp.*, 54 C. L. J. 470 – A. I. R. 1932, Cal. 377.

constitute an offence falling into two or more separate definitions of any law in force for the time being, the person accused of them may be charged with and tried, at one trial, for each of such offences.

If several acts, of which one or more than one would by itself or themselves constitute an offence, when combined constitute a different offence, the person accused of them may be charged with and tried, at one trial, for the offence constituted by such acts when combined, and for any offence constituted by any one, or more of such acts[1].

Particeps Criminis : Community of intention · Joint trial.—If a series of acts are closely connected and there be community of criminal intention as would make the co-accused *particeps criminis* then they may be tried together.

In order that a number of acts may be so connected together as to form part of the same transaction within the meaning of Section 235, Criminal Procedure Code, community of purpose or design and continuity of action are essential elements. To constitute community of purpose, the mere existence of some general purpose or design will not be sufficient. The purpose in view must be something particular and definite There is no continuity of action where each act is a completed act in itself[2]. A Sub-Inspector of Police misappropriated some ornament

Section 235 Cr. P. C.

Boddypalli Subbayya v. *E.*, 33 Mad. 502 = 7 M. L. T. 299 = 20 M. L. J. 220 = 5 I. C. 817 = 11 Cr.L.J. 58 = 1910 M. W. N. 65.

and changed the entries he had made in the Police General Diary regarding the said property and inserted fresh pages showing that the property was never taken to the Thana. He was accordingly tried for criminal misappropriation, for criminal breach of trust, under Section 409, for framing incorrect records under Section 218, and for falsification of accounts under Section 477-A, I. P. C., and was convicted of offences punishable under Sections 218 and 477-A, I. P. C. It was *held* that all the charges being in relation to acts which were so connected together as to form one transaction, they could be legally joined and tried at one trial[1].

Where joint trial is permissible, but several trials are held and the accused persons are convicted, it has been held that the conviction is not bad in law.

Separate trial—not illegal.—Where persons are charged with rioting and also with causing hurt, although they may be tried as for one offence, it is not illegal to try them for both the offences separately[2].

Alternative charge : Cognate offences.—Section 236 of the Code of Criminal Procedure, only authorises a charge in the alternative when it is doubtful which of the several offences, the facts which can be proved will constitute, and not where there may be a doubt as to the facts which constitute one of the elements of the offence[3]. Section 236 refers to cognate offences. It has been *held* by the Privy Council that under

1. *Bilas Chandra Banerjee* v. *K. E.*, 27 C. W. N. 626.
2. *Amiruddin* v. *Farid Sarkar*, 8 Cal. 481=4 Shome L. R. 282.
3. *Wafadar Khan* v. *Q. Emp.*, 21 Cal. 955.

Section 237 read with Section 236 of the Criminal Procedure Code, a man may be convicted of an offence although there has been no charge in respect of it, if the evidence is such as to establish a charge that might have been made[1].

The above rule applies when a person is charged with one offence and the evidence discloses that he committed a different offence for which he might have been charged. Section 237 Cr. P. C., has no application when it appears at the trial that an offence of a different character was committed[2]. The accused was charged and convicted of theft. In appeal, the District Magistrate found that no theft was committed, but convicted the accused of having been a member of an unlawful assembly. *Held*, the accused was called upon to answer only the charge of theft and not any other charge, so he could not be convicted, on appeal, of an offence of an entirely different character[3].

Conviction for minor offence—though no charge for that offence is framed.—When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it[4].

A person charged with dacoity may be convicted

1. *Begu* v. *K. Emp.*. 30 C. W. N. 581.
2. *Dastarilal* v. *E.*, 58 Cal. 822.
3. *Dibakar* v. *Sakti Dhar Kaviraj*, 31 C. W. N. 527=54 Cal. 476.
4. Section 238 Cr. P. C. and *Q. Emp.* v. *Sitanath*, 22 Cal. 1006; *Jogendra Singh* v. *E.*, 33 Cr. L. J. 315=A. I. R. 1931 Lah. 566.

of theft, the latter being a minor offence[1]. If the offence of rioting is not proved, the Magistrate is competent to try the accused for the offence of assault[2]. But in a recent Madras case it was *held* that where the accused were charged with rioting they could not be convicted of criminal trespass, if that was not the common object[3]. Where several accused were charged under Sections 147, 149/304, 149/323, 149/325, of the Indian Penal Code, they could not be convicted under Section 325 of the Penal Code as they had not been called upon to meet such a charge, and as it was not minor to or included in a charge under Sections 149/325 of the I. P. Code[4].

Joint trial.—Law as to joint trial is to be found in Section 239 Cr. P. C. As the section is important it is reproduced below :

"The following persons may be charged and tried together, namely :—

(a) persons accused of the same offence committed in the course of the same transaction ;

(b) persons accused of an offence and persons accused of abetment or of an attempt to commit such an offence ;

(c) persons accused of more than one offence of the same kind within the meaning of Section 234, committed by them jointly within the period of twelve months ;

1. *Q. Emp.* v. *Khoda Uma*, 17 Bom. 369.
2. *Q. Emp.* v. *Papadu*, 7 Mad. 454=2 Weir 551.
3. *In re Mongalu*, 18 Cr. L. J. 860 (Mad).
4. *Panchu Das* v. *Emp.*, 34 Cal. 698=11 C.W.N. 666=5 Cr.L.J. 427.

(d) person accused of different offences committed in the course of the same transaction ;

(e) persons accused of an offence which includes theft, extortion or criminal misappropriation, and persons accused of receiving or retaining, assisting in the disposal or concealment of property, possession of which is alleged to have been transferred by any such offence committed by the first named persons or of abetment of or attempting to commit any such last named offence ;

(f) persons accused of offences under Section 411, Section 414 of the Indian Penal Code or either of those sections in respect of stolen property, the possession of which has been transferred by one offence ; and

(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence ; and the provisions contained in the former part of Chapter XIX (Cr. P. C.) shall so far as may be, apply to all such charges[1]."

Conspiracy : Counter cases : Receiving stolen property : Joint trial etc.—The persons to be jointly tried must have been associated from the first in the series of acts which form the same transaction[2]. Once a charge of conspiracy is framed, any thing

1. Section 239 Cr. P. C.
2. *Emperor* v. *Jethalal Hurlochand*, 29 Bom. 449=7 Bom L. R. 527=2 Cr. L. J. 180.

done in pursuance of the conspiracy can be tried at the trial for conspiracy, for the offence of conspiracy and the offences committed in pursuance thereof form one and the same transaction[1]. In counter cases of rioting the two parties should be tried separately as they cannot be considered to have acted in the same transaction. Abduction of the same girl by different persons on different dates cannot be said to form the same transaction and the accused persons should not be tried together. Dacoity and receiving stolen property can be said to be in the course of the same transaction and these can be tried together[2].

Joint trial : Prosecution to establish claim :—Where prosecution claims a joint trial it is for the prosecution to justify the prayer[3].

Is joint trial absolutely necessary ?—The Magistrate has a full discretion to try the accused persons jointly or separately[4].

1. *Abdul Salim* v. *K. Emp.*, 26 C. W. N. 680.
2. *Durga Prosad* v. *Emp.*, 45 All. 223 ; 20 A. L. J. 981.
3. For the Principles of Joint Trial—*See Bhaggan* v. *E.*, 11 Luck. 70=A. I. R. 1935 Oudh 327.
4. *Govinda* v. *Emp.*, 21. Cr. L J. 709.

CHAPTER II.

BAIL.

Bail.—"When any person, other than a person accused of non-bailable offence, is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, and is prepared at any time, while in the custody of such officer or at any stage of the proceedings before such Court, to give bail, such person shall be released on bail : Provided that such an officer or Court if he or it thinks fit, may instead of taking bail from such person, discharge him on his executing a bond without sureties for appearance as hereinafter provided :

Provided, further, that nothing in this section shall be deemed to affect the provisions of Section 107, sub-section (4) or Section 117, sub-section (1)"[1].

An under-trial prisoner is detained generally to secure his appearance[2]. When any person accused of a non-bailable offence is detained or arrested without warrant by an officer-in-charge of a police station or appears or is brought before a Court he should be immediately released on bail. When the accused is charged with a non-bailable offence he shall not be so released if there appear reasonable

1. Section 496 Cr. P. C.

2. *Jamini* v. *Emp.*, 36 Cal. 174 (=1 I. C. 910=18 C. W. N. 51 =9 Cr. L. J. 409=4 M. L. T. 482).

grounds for believing that he had been guilty of an offence punishable with death or transportation for life; provided that the Court may direct that any person under the age of 16 years or any woman or a sick or any infirm person accused of such an offence be released on bail[1].

Bail: amount of bail.—The amount of every bail bond should be fixed with due regard to the circumstances of the case and should not be excessive, that is to say, the bail must be fixed according to the position in life of the accused[2]. It will be denying justice to demand security which the accused cannot possibly furnish.

The principle to be applied in granting bail was enunciated by Mookherjee and Chatterji JJ., in the case of *Nagendra Chakravarty* v. *Emp*[3]. I like to quote the following portion from the judgment of the said case and I hope this may be read with advantage by the junior practitioners and the subordinate Courts.

"It is indisputable that bail is not to be withheld merely as a punishment. The requirements as to bail are to secure the attendance of the accused at the trial; *R.* v. *Rose*[4]. The proper test to be applied in the solution of the question, whether bail should

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1. Section 497 Cr. P. C. *Jahana* v. *E.*, 36 Cr. L. J. 227=A. I. R. 1934 Lah. 609 (2).

2. *Emp.* v. *Kalachand*, 6 Cal. 14=6 C. L. R. 128.

3. 38 C. L. J. 388. (Read also *E.* v. *Md. Panah*, A. I. R. 1934 Sind 131).

4. (1898) 18 Cox 717.

be granted or refused, is whether it is probable that the party will appear to take his trial: *Re Robinson*[1]; *R.* v. *Caife*[2]. The test is applied by reference to the following considerations :

(a) the nature of the accusation ; *R.* v. *Barronet*[3]; *R.* v. *Butler*[4].

(b) The nature of the evidence in support of the accusation ; *Re Robinson*[5] ; *R.* v. *Butler*[6] ; *R.* v. *McCormic*[7] .

(c) The severity of punishment which conviction will entail; *Re Robinson*[8] ; *R.* v. *Andrews*[9]. In this connection we may recall that in England, bail in treason or felony is discretionary in the High Court or Courts having jurisdiction to try the offence ; *R.* v. *McCartie*[10] ; *R.* v. *Platt*[11] ; on the other hand, bail in misdemeaner is said to be of right at Common Law ; *R.* v. *Spilsbury*[12] ; *R.* v. *Badgar*[13] ; *R.* v *Frost*[14] ;

1. (1854) 23 L. J. Q. B. 286 ; 2 W. R. (Eng.) 424.
2. (1841) 9 Dowling P. C. 553 ; 5 jur. 700.
3. (1853) 1 E. & B. 1 ; Dearsley 51.
4. (1881) 14 Cox 530 ; 8 L. R. (Ir.) 39.
5. (1854) 23 L. J. Q. B. 286 ; 2 W. R. (Eng.) 424.
6. (1881) 14 Cox 530 ; 8 L. R. (Ir.) 39.
7. (1864) 17 Ir. C. L. R. 411.
8. (1852) 1 E. & B. 8 ; Dearsley 60.
9. (1844) 2 D. & L. 10 ; 13 J. M. C. 113.
10. (1859) 11 Ir. C. L. R. 188 (192).
11. (1777) 1 Leach 157.
12. (1898) 2 Q. B. 615.
13. (1843) 4 Q. B. 468 (472) ; D. & M. 375, 4 St. T. N. S. 1387.
14. (18[illegible]) 4 L. L. R. 757

see also *R.* v. *Crowe*[1]; *R.* v. *Beardmore*[2]; *R.* v. *Osborne*[3]; *King* v. *Fortier*[4]. This distinction is reflected in Sections 496 and 497 of the Criminal Procedure Code which treat respectively of the grant of bail in cases of what are described in the phraseology of the Indian Legislature as bailable and non-bailable offences.

The substance of the matter is that the discretionary power of the Court to admit to bail is not arbitrary but is judicial: *Manikam* v. *Queen*[5], and is governed by established principles. The object of the detention of the accused being to secure his appearance to abide by the sentence of law, the principal enquiry is, whether a recognizance would effect that end In seeking an answer to this enquiry, the Courts have considered the seriousness of the charge, the nature of evidence, the severity of punishment prescribed for the offence; and in some instances, the character, means and standing of the accused; see *R.* v. *Bennett*[6]; *R.* v. *Atkins*[7]; *R.* v. *Manning*[8]; *R.* v. *Wood*[9]; *R.* v. *Gallagher*[9a]; *R.* v. *Stuart*[10].

1. (1829) 4 C. & P. 251.
2. (1836) 7 C. & P. 497.
3. (1837) 7 C. & P. 799.
4. (1902) 13 Quebec K. B. 251; 6 Canada Cr. Cas. 191; 1 Am. Cas. 10.
5. (1882) I. L. R. 6 Mad. 63.
6. (1907) 49 L. T. (Newspaper) 387.
7. (1907) 49 L. J. 421.
8. (1888) 5 T. L. R. 139.
9. (1845) 9 Ir. L. R. 71.

9a. (1855) 7 W. C. L. 19.

10. (1900) 4 Canada Cr. Cas. 131.

Section 497 of the Criminal Procedure Code leaves ample room for exercise of discretion on these lines, and we are in agreement with the view expressed by Mitra J. in *Re Johur Mull*[1], and *Jamini Mallick* v. *Emp*[2]. We may also recall that Section 497 has been materially altered by Section 136 of Act XVIII of 1923 which substitutes the words "an offence punishable with death or transportation for life" for the words "the offence of which he is accused". This cannot be regarded as a result of liberalising influence on the policy of the legislature......and discretion of the Courts will henceforth be less fettered than before". The grant of bail is the rule and refusal is the exception, as an accused person is presumed to be innocent till his guilt is proved[3].

Bail by High Court or Court of Session.—The High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a Police officer or Magistrate be reduced[4]. Section 498 is not controlled by Section 497, and the High Court and Court of Session can allow bail on sufficient grounds even in *non-bailable* cases[5]. The above power of granting bail may be exercised during the

1. (1906) 10 C. W. N. 1093.
2. (1908) I. L. R. 36 Cal. 174.
3. *Emp.* v. *Hutchinson*, 53 All. 931.
4. Section 498 Cr. P. C.; *Jogleka* v. *E.*, 54 All. 115 [Practice of refusing bail in serious non-bailable cases--discussed].
5. *Re Ramaraja*, 2 Weir 657 (F.B.); *King Emp.* v. *Badri*, 5 A. L. J. 419.

police investigation and also during an enquiry or trial. A bail bond is required (with or without sureties) to enforce attendance of a person at the time and place mentioned therein and the person is released as soon as possible after the bond is executed and tested. If sufficient bail was not taken at the outset due to mistake, fraud and the like, the Court may issue a warrant for arresting the person and then release him on his furnishing sufficient security.

Discharge of surety.—Any surety may at any time apply to the Magistrate for discharge and the Magistrate has to discharge the bail bond after calling upon the accused person to find other sureties. If the accused fail to do so the Magistrate may commit him to custody.

Bonds : Deposit instead of bail bond.—When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes of such amount as the Court or officer may fix, in lieu of executing such bond[1].

Forfeiture of bond.—If the terms of the bond are broken it can be forfeited by the Magistrate after issuing notice to the surety. The Court is required to record reasons for the forfeiture. After forfeiture the penalty can be realised in the way mentioned in Section 514 Cr. P. C. The Court has discretion

1. Section 513 Cr. P. C.

to remit any portion of the penalty if sufficient cause be shown[1].

Appeal.—An order of forfeiture passed by a Magistrate is appealable to the District Magistrate. He can also revise the order[2].

CHAPTER III.

WITHDRAWAL FROM PROSECUTION.

Withdrawal from prosecution.—Any Public Prosecutor may with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person, either generally or in respect of any or more of the offences, for which he is tried ; and upon such withdrawal,

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences ;

(b) if it is made after a charge has been framed, or when no charge is required, he shall be acquitted in respect of such offence or offences.

In according or withholding consent to an application by the Public Prosecutor for withdrawal, the

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1. *Girin Das Gupta* v. *E.*, A. I. R. 1935 Cal. 246.
2. Section 515 Cr. P. C. ; *E.* v. *Pandhikhan*, A.I.R. 1934 Sind 152.

Court acts in a judicial capacity and as such must record its reasons[1] for orders passed, so that the High Court in revision may be in a position to say whether the discretion[2] vested in the Court has been properly exercised.

If after commitment of the accused to the Court of Session the Public Prosecutor applies for withdrawing the case and the Judge allows it, the Judge has to record an order of acquittal and not of discharge[3].

CHAPTER IV.

WHEN PREVIOUS CONVICTION OR ACQUITTAL BARS A SUBSEQUENT TRIAL.

When previous conviction or acquittal bars a subsequent trial.—A person who has been tried by a Court of competent jurisdiction and convicted or acquitted of such offence, shall not be liable to be tried for the same offence nor on the same facts for any other offence for which a charge different from the one made, might have been made or for which he might have been

1. Section 494 Cr. P. C. The Lahore High Court is of opinion that it is not necessary to record any reason. *Lakhmi Narayan* v. *E.*, A. I. R. 1932 Lah. 368.

2. *Umesh Chandra Roy* v. *Satish Chandra Roy*, 22 C. W. N. 69. *Sher Sing* v. *Jitendranath Sen*, 36 C. W. N. 16=59 Cal. 275.

3. *Empress* v. *Sibaram*, 12 Mad. 35.

convicted under Section 237 Cr. P. C.[1] The dismissal of a complaint, the stopping of proceedings, and the discharge of accused are not considered as acquittal. Law bars a second trial when the accused is acquitted in the first trial, but not where he is simply discharged. To bar a second trial it must be shown that the first trial was held by a Court which had jurisdiction to try it[2]. When the jury is discharged before the trial is finished, a second trial is not barred, because the second trial is in fact the real trial of the accused[3]. A Court in a second trial cannot say that the trial is barred under Section 403 Cr. P. C., without investigating into the facts put forward on behalf of the complainant[4]. In the case of *M. N. Mookerji* v. *Matangi Charan*, the complainant petitioner charged the opposite party with cheating and criminal breach of trust. A preliminary objection was taken that the accused had been tried before on the same facts and acquitted. The Magistrate heard both sides, looked into the record of the previous trial and *held* that the second trial was barred. On revision the High Court sent the case back for due enquiry observing that the Magistrate ought to have determined on evidence that

1. *Gayadin* v. *E.*, 9 Luck. 517 = A. I. R. 1934 Oudh. 259(1). (*Fresh trial barred*).
   Ram Das v. *E.*, 1934 A. L. J. 852 = 35 Cr. L. J. 1349 (*Fresh trial not barred*).
2. Section 403 Cr. P. C., and *Re Pratap*, 2 W. R. 9.
3. *Emp.* v. *Nirmal Kanta*, 41 Cal. 1072.
4. *Radha Kishan* v. *Fatehchand*, 23 C. W. N. 543.

the facts of the two cases were the same[1]. The second trial is barred only when the facts of the two cases are identical and fall within the provisions of Sections 236 or 237 Cr. P. C.[2] A person who was acquitted of of the charge of cheating cannot be charged again for falsification of accounts, if the facts of the two cases are same[3]. A second trial may, however, proceed for a distinct offence for which a charge might have been framed under Section 235 sub section (1)[4]. When the facts indicate a different kind of offence for which there could be no conviction in the first trial, the second trial is not clearly barred.

CHAPTER V.

TRANSFER OF CASES ETC.—IRREGULARITIES.

Transfer of Criminal cases by High Court from one Court to another.—The High Court has powers under Section 526 Cr. P. C., to transfer a case from one Court to another within its jurisdiction. The High Court may act either on the report of the lower Court or on the application of a party interested or on its own initiative.

1. 23 C. W. N. 599.
2. *Queen Emp.* v. *Subedar*, 1 B. L. R. 15.
3. *Emp.* v. *Nand Kishore*, 20 Cr. L. J. 667.
4. See Section 403 Cr. P. C. clause 2. See *Ram Das* v. *E.*, 35 Cr. L. J. 1349 *(supra)*.

Application to High Court for transfer of case.—Every application, for the transfer of a case, to the High Court is to be made by motion which should be supported by an affidavit. If the application appears to be frivolous or vexatious, the High Court may order the applicant to pay costs to the opposite party.

Notice of application.—Notice of the application has to be given to the Public Prosecutor.

Grounds of transfer.—"Whenever it is made to appear to the High Court that a fair and impartial enquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(a) that some question of law of unusual difficulty is likely to arise, or

(b) that a view of the place in or near which any offence has been committed may be required for the satisfactory enquiry into or trial of the same, or

(c) that an order under this section will tend to the general convenience of the parties or witnesses, or

(d) that such an order is expedient for the ends of justice, or is required by any provision of this Code,"—the High Court may order that the case be transferred from one Court to another.

A case or appeal may be transferred from one Court to another within the High Court's jurisdiction or the High Court can itself try the case or hear the appeal.

For further particulars see Section 526 Cr. P. C.

Adjournment in subordinate Court for making an application for transfer to the High Court.—If in the

course of any enquiry or trial or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending, his intention to make an application in respect of such case or appeal, the Court has to adjourn the case or postpone the hearing of the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon. A Judge presiding in a Court of Sessions is not required to adjourn a trial, if he is of opinion that the person notifying his intention of making an application for transfer had a reasonable opportunity of making such an application beforehand and has failed, without sufficient cause, to take advantage of it.

Procedure before application is made to the High Court.—The High Courts generally insist that before an application is made for transfer under Section 526, Cr. P.C., the party should move the District Magistrate for the purpose[1]. Section 526 has lately been amended by omitting the word "criminal" before the word "case". So, the High Court has now powers to transfer miscellaneous proceedings also, *e.g.*, a case under Section 14 of the Legal Practitioners' Act and the like.

Party to make out a case for transfer.—The applicant must place and prove, before the High Court,

1. *Ravi Chandra v. Sundar*, 26 Cr. L. J. 960 (All.)
In the matter of *Fonsecca* 1 Cr. L. J. 589.

some facts from which the Court may draw an inference that the accused believes that he may not get an impartial trial[1].

Confidence in the administration of justice is an essential element of good Government. A reasonable apprehension of failure of justice in the mind of the accused is, therefore, taken into consideration on an application for transfer. If the words used by or the actions of a judicial officer, though susceptible of explanation and traceable to a superior sense of duty, are calculated to create in the mind of the accused an apprehension that he may not have an impartial trial, the case is liable to be transferred to some other judge for trial[2], or in other words, the transfer of a case is ordered when there are circumstances which may reasonably lead the petitioner to believe that the Magistrate has to some extent prejudged the case against him, and that the petitioner will in consequence be prejudiced in the trial[3].

If a Magistrate expresses a strong opinion about the guilt of the accused the case is, as a general rule, transferred from his file[4].

If the Magistrate has knowledge about the case from outside and not from the materials on the record, the case deserves to be transferred from his file. Next to the importance of deciding a case fairly

1. *Amar Singh* v. *Sadhu Singh*, 6 Lahore 396=26 Cr. L. J. 853.
2. *Kali Charan Ghose* v. *Emp.*, 33 Cal. 1183=3 Cr. L. J. 477.
3. In the matter of petition of *J. Wilson*, 18 Cal. 247.
4. *Faquir Sing*, 10 Lahore 283.

and impartially, is the importance to inspire in the minds of the parties, a confidence that nothing but absolute justice would be done. If, therefore, any party reasonably apprehends that there is a bias against him in the mind of the officer concerned, it would be expedient for the ends of justice to transfer the case from his file to that of some other officer competent to try it, though there may not be any actual bias[1].

Transfer of Communal cases.—Where strong communal feeling exists, *e.g.*, in a case between the Hindus and Mahomedans regarding a *mosque* or grave-yard, the case should be transferred to the file of the District Magistrate or some European Magistrate[2]. This principle was followed by their lordships of the Calcutta High Court in the celebrated *Khord Govindapur riot case* and the trial was ordered to be held by a European Christian Judge with the aid of assessors. (*See 40 C. W. N. notes, page 109*). According to Addison J. of the Lahore High Court,—it is no ground for transfer of a case from the Court of a Hindu or Mahomedan Magistrate to that of a European Magistrate that the parties belong to different religions or the dispute is of a *communal* or *quasi-communal* nature. In order to obtain a transfer it must be shown that there is a reasonable apprehension in the mind of the person applying for it that he will not get a fair trial[3].

1. *Lalit Mohan Moitra* v. *Suryya Kanta Acherjee*, 28 Cal. 709.
2. *Kader Baksh* v. *Sundar Lal*, 1915 P. L. R. 127.
3. *Nathu* v. *Joti Prosad*, A. I. R. 1934 Lah. 73=35 Cr. L. J. 624.

Where on an application being made by the accused to the trying Magistrate for time to enable him to move the High Court for transfer of the case pending against him, the Magistrate did not pass an order at once, but examined 13 witnesses for the prosecution, and then passed an order allowing 14 days' time and where, after the fact of the issue of a *rule* by the High Court on the application for transfer, had been communicated by a telegram from a Vakil of the High Court, the Magistrate instead of postponing the case at once examined four witnesses and then made an order for adjournment, it was *held* that these proceedings on the part of the Magistrate were sufficient to justify the transfer of the case from his file[1].

Transfer of case by Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate.—Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other Magistrate competent to inquire into or try the same. The Local Government may authorize the District Magistrate to withdraw from any Magistrate subordinate to him, either such classes of cases as he thinks proper, or particular classes of cases.

Any Magistrate may recall any case made over by him under Section 192, sub-section (2) to any other

1. *Wahed Molla* v. *Shaik Basaraddi*, 11 C. W. N. 507.

Magistrate and may inquire into or try such case himself. A Magistrate making an order of transfer, has to record in writing his reasons for ordering the transfer[1].

Procedure : Notice.—On general principles, notice should be given to the other side so that he may place his case before the Court at the time of the hearing of the rule[2]. But if no notice is given and an order is passed, it does not amount to an illegality[3].

Irregularities which vitiate proceedings and which do not.—The law on the subject has been laid down in Ch. XLV of the Cr. P. Code

Section 529 gives a list of the irregularities which do not vitiate proceedings Similarly Section 530 gives a list of the irregularities which are fatal and vitiate proceedings.

"If any Magistrate not empowered by law to do any of the following things, namely :—

(a) issue a search-warrant under Section 98 ;

(b) to order, under Section 155, the police to investigate an offence ;.

(c) to hold an inquest under Section 176 ;

(d) to issue process under Section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;

(e) to take cognizance of an offence under Section 190, sub-section (1), clause (a) or clause (b) ;

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1. Section. 528 Cr. P. C.
2. *Ajodhiya Lal* v. *Prayag Narain*. 7 C. W. N. 114.
3. In re *Hawaji*, 21 Bom. L. R. 276=50 I C. 496.

(f) to transfer a case under Section 192 ;

(g) to tender a pardon under Section 337 or Section 338 ;

(h) to sell property under Section 524 or Section 525 ; or

(i) to withdraw a case and try it himself under Section 528 ;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being empowered[1]."

"If any Magistrate not being empowered by law in this behalf, does any of the following things, namely :—

(a) attaches and sells property under Section 88 ;

(b) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department ;

(c) demands security to keep the peace ;

(d) demands security for good behaviour ;

(e) discharges a person lawfully bound to be of good behaviour ;

(f) cancels a bond to keep the peace ;

(g) makes an order under Section 133 as to a local nuisance ;

(h) prohibits, under Section 143, the repetition or continuance of a public nuisance ;

(i) issues an order under Section 144 ;

(j) makes an order under Chapter XII ;

(k) takes cognizance, under Section 190, sub-section (1), clause (c) of an offence ;

1. Section 529 Cr. P. C.

(l) passes a sentence under Section 349, on proceedings recorded by another Magistrate ;

(m) calls, under Section 435, for proceedings ;

(n) makes an order for maintenance ;

(o) revises, under Section 515, an order passed under Section 514 ;

(p) tries an offender ;

(q) tries an offender summarily ; or

(r) decides an appeal ;

his proceeding shall be void[1]."

Other irregularities.—Proceedings in wrong places, irregular commitment, omission to prepare a charge, error, omission or irregularity in issuing summons, etc., misdirection in any charge to Jury will not render the trial and conviction bad in law unless it has occasioned failure of justice. If a case triable with the aid of assessors is tried by a Jury, the trial is not invalid. But if the offence triable by a Jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken—before the Court records its finding[2].

1. Section 530 Cr. P. C.
2. Section 536 Cr. P. C.

CHAPTER VI.

PROCEDURE WHEN MAGISTRATE CANNOT LEGALLY TRY OR DEAL WITH A CASE. TRIAL BY MORE THAN ONE MAGISTRATE.

Procedure when a Magistrate himself cannot legally try a case.—The Magistrate is to report the case to his superior Magistrate and the latter may try the case himself or may send it for trial or enquiry to a subordinate Court or can commit the accused to the Sessions for trial[1].

Trial : Commitment,—where necessary.—Where a Magistrate after commencement of the trial finds that the case should be committed to the Court of Session he can do so[2]. If there be more than one accused and the case against one can be tried by the Magistrate and against the other by the Court of Session or High Court, the Magistrate may (if so empowered) commit all the accused to Sessions[3].

Procedure of enquiry or trial by more than one Magistrate.—When a Magistrate after having heard and recorded the whole or any part of the evidence in any enquiry or trial, ceases to exercise jurisdiction

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1. *Hampanna*, 45 Mad. 846, 23 Cr. L. J. 710. Section 346 Cr. P. C.
2. Section 347 Cr. P. C. For Procedure read *Lakhmi Narayan* v. *Suryanarain*, 1932 M. W. N. 634 = A. I. R. 1932 Mad. 502 = 63 M. L. J. 101.
3. *Ghani Yakub* v. *Crown*, 21 Cr. L. J. 791.

therein, his successor may act on the evidence recorded by his predecessor and on the evidence recorded by himself or he can re-summon the witnesses and re-commence the inquiry or trial,—but the witnesses must be re-summoned if the accused, before the trial by the second Magistrate commences, demands that the witnesses or any one of them be re-summoned and re-heard (Section 350 Cr. P. C.)[1]. This law does not apply to trial by Benches of Magistrates[2]. It is for the accused to claim the privilege of a *de novo* trial before the new Magistrate, and the Magistrate is not bound to ascertain whether the accused demands a fresh trial[3].

1. *Jangi Lal*, 19 Cr. L. J. 657 (Nag.) ; *Chandika Prosad* v. *King Emp.*, 25 Cr. L. J. 1075.
2. *Damri* v. *Bhowani*, 23 Cal. 194.
3. *Nga Po* v. *King Emp.*, Upper Burma Rulings (1912) 151.

PART II(B)

Practice and Procedure (Completed).

APPEALS, REVISION, POWER TO SUSPEND OR REMIT SENTENCES, LOCAL INVESTIGATION, DISPOSAL OF PROPERTY, INHERENT POWER OF HIGH COURT TO STAY PROCEEDING ETC.

CHAPTER I.

APPEAL.

Appeal.—No appeal is allowed from any judgment or order except as provided for in the Criminal Procedure Code or by any other law. But the Judicial Committee of the Privy Council exercising prerogative right on behalf of the Crown can entertain any appeal though the Code of Criminal Procedure does not provide for it[1].

Orders appealable.—An appeal lies from the following orders :—

(i) from an order rejecting an application for restoration of attached property (Sec. 89 Cr. P. C.) ;

(ii) from an order requiring security for keeping the peace or for good behaviour ; (Sec. 118 Cr. P. C.)

Note.—If the order was passed by a Presidency Magistrate the appeal lies to the High Court. In any other case, an appeal will lie to the Court of Session.

(iii) from an order refusing to accept or rejecting a surety (Sec. 122 Cr. P. C.)

Note.—If the order is made by a Presidency Magistrate an appeal lies to the High Court ; if made by the District Magistrate—to the Court of Session and if made by any other Magistrate,—to the District Magistrate.

1. *Joykishora Mookherjee*, 1 W.R. 13 (P.C.) (See Chapter XXXI Cr. P. C.)

Appeal to whom and when lies :—

Court passing the sentence.	Court to which appeal lies.	Remarks.
(1) Sentence passed by Asst Sessions Judge not exceeding 4 years or sentence passed by a Magistrate of 1st class. (*See No. 5 for meaning of imprisonment.*)	(a) District Judge (*See Sec. 408*)	(a) In a joint trial, if appeal of some accused lies to the Session Judge and of other to the High Court, the appeal of all the accused will lie to the High Court.
(2) When convicted by a Magistrate under Sec. 124-A I. P. C.	High Court (*See Sec 408*)	
(3) Sentence passed by the Magistrates of 2nd or 3rd class and sentence or order passed under Sections 349 and 380.	(b) District Magistrate (*Sec. 407*)	(b) The District Magistrate may transfer the appeal to any other Magistrate specially empowered; Addl. District Magistrate, if so empowered, can hear the appeal
(4) Any sentence passed by the Sessions Judge or Addl. Sessions Judge.	High Court (*Sec. 410*)	
(5) Sentence passed by a Presidency Magistrate awarding imprisonment exceeding 6 months or fine exceeding Rs. 200/-	(c) High Court (*Sec. 411*)	(c) The word '*imprisonment*' means a substantive one and not one in default of payment of fine [1].

N. B. The aggregate sentence counts as one sentence for the purpose of an appeal.

1. *Schein v. Queen Emp.*, 16 Cal. 799.
Ram Chunder Shaw v. *Emp.*, 6 Cal. 575=8 C. L R. 250.

Court passing the sentence.	Court to which appeal lies.	Remarks.
(6) Sentence passed by Sessions Judge or a Presidency Magistrate or a Magistrate of 1st class, when accused pleads guilty.	(*See Sec. 412*)	No appeal lies except as to the extent and the legality of the sentence [1]. If convicted by a 2nd or 3rd Class Magistrate, appeal is not barred [2]. Section 412 bars appeal where the conviction is by a 1st class Magistrate.
(7) Sentence not exceeding 1 month passed by a Sessions Court or where a Court of Session or a District Magistrate or a 1st Class Magistrate imposes a fine not exceeding Rs. 50/-. **Note** :—The words, "*a Sentence of fine*" include a case where the aggregate sentence does not exceed Rs. 50. *Nabal Ali* v. *Jainab Bibi*, 59 Cal. 1113.=36 C. W. N. 407. Read *Akbar Ali* v. *Emp.*, 59 Cal. 19=35 C. W. N. 752.	No appeal lies. (*Sec. 413*)	There is no appeal where imprisonment is awarded in default of payment of fine [3]. An appeal lies from an order awarding compensation less than Rs. 50 under Section 22 of the Cattle Trespass Act [4].
(8) In a Summary trial—sentence of fine not exceeding Rs. 200/- passed by a Magistrate specially empowered.	No appeal lies. (*Sec. 414*)	If sentenced to 1 day's imprisonment an appeal will lie to the Sessions Judge.

1. *Emp.* v. *Akub Ali*, 31 C. L. J. 122.
2. *Chunilal* v. *Emp.*, 28 Bom. L. R. 1023.
3. Section 413 Cr. P. C.
4. *Rodriks* v. *Papa*, 46 Bom. 58., 22 Cr. L. J. 624.

Imprisonment and fine.—Where the accused is sentenced to 1 day's imprisonment and fine of Rs. 50/-, the two sentences are combined for the purposes of appeal. But if a person is sentenced and also ordered to find a surety—no appeal lies if the substantive sentence is not appealable[1].

Joint trial—conviction—appeal.—Where several persons are tried togather and convicted and an appealable judgment or order is made in respect of any one of such persons—all or any of such persons convicted may appeal[2].

Appeal from an acquittal by the Local Government.—The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court[3].

There is no distinction between an appeal from an acquittal and that from a conviction. In an appeal from an acquittal, the Appellate Court can, go into the facts as well as into the questions of law. A Sessions Judge has no power to set aside an order of acquittal[4]. The District Magistrate cannot entertain an appeal from an order of acquittal[5].

1. *Maghu* v. *King Emp.*, 1 Cr. L. J. 1054; E. Nga Tunlu 13 Rang. 287 (1935).
2. Vide New Sec. 415 (A) added by Act XVIII of 1923.
3. Section 417 Cr. P. C. Read *E.* v. *Nathu Sing*, A. I. R. 1934 Lah 212. *Gafour Khan* v. *E.*, 6 Luck. 539 = A. I. R. 1931 Oudh 116. *For Principles in Appeal against acquittal, *See Rammurti* v. *Jatindra*, 34 Cr. L. J. 661 = A. I. R. 1933 Oudh 257.
4. *Baijn Nath Pandey* v. *Gauri Kanta Mandal*, 20 Cal. 633.
5. *Sami Ayya*, 26 Mad. 478. = 2 Weir 483 = 13 M. L. J. 263.

Appeal : Jury trial.—An appeal lies on a matter of fact as well as on a matter of law; but where a trial is by a jury the appeal is confined to matters of law only[1]. The High Court does not ordinarily reverse the finding of the jury unless there was serious misdirection. If in a case of a trial by a jury any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as on a matter of law. The alleged severity of sentence is a matter of law[2].

Petition of appeal.—Every appeal is made in the from of a petition in writing, containing the grounds and the petition is presented by the appellant or his pleader before the Appellate Court. The petition of appeal has to be accompanied by a copy of the judgment or order appealed against and in a case tried by a jury, a copy of the heads of the charge recorded. In an appeal from a conviction at a Sessions trial, the petition should contain, the questions of law raised[3]. (*See Model in Part VIII*).

N. B.—Where a copy of judgment is not filed with the petition of appeal, it should be filed before the hearing (*Emp* v. *Sitaram*, 5 Bom. L R. 704)

Vakil's clerk—whether he can present a petition of appeal.—A vakil's clerk can present a petition of

1. *Wafadar* v. *Queen Emp.*, 21 Cal. 955.
2. Section 418 Cr. P. C.; *Emp.* v. *Ikramuddin*, 39 All. 348.
3. *Gopal*, 1 W. R. 21.

appeal if the vakil signs the petition and accepts the *vakalatnama*[1].

Jail appeal.—A prisoner gets copies of judgment or order and heads of charge to the Jury, free of costs, on applying to the Court, through the Jail Superintendent. The copies with the petition of appeal are presented to the officer-in-charge of the jail who forwards them to the Appellate Court.

Appeal in a case of death sentence—Pleader.—In a case where the prisoner has been sentenced to death by the Sessions Judge, the Local Government appoint a pleader for conducting the appeal, on behalf of the prisoner, before the High Court.

Summary dismissal.—The Appellate Court may on perusing the judgment and the petition of appeal and after hearing the appellant or his pleader, dismiss the appeal summarily or may call for the record, but it is not bound to do so. When an appeal is summarily dismissed the Appellate Court is not bound to record a judgment[2]. But the Allahabad High Court is of opinion that the Judge even when summarily dismissing an appeal should shortly state the reasons for his rejection of the appeal[3].

Right of Appellant to be heard :—No dismissal for default.—The appellant has a right to be heard by a.

1. *Gudiyati Samuel*, 2 Weir 469.
2. *Rash Behari* v. *Balgopal*, 21 Cal. 92.
3. *Emp.* v. *Nannhu*, 17 All. 241 (F. B.) = 15 A. W. N. (1895) 68. *Emp.* v. *Lal Behari*, 38 All. 393.

pleader[1]. No Criminal appeal can be dismissed for default of appearance by the party (as in a civil case). The dismissal shall be on the merits of the case[2].

What the Appellate Court can do.—In an appeal from a conviction, the Appellate Court can reverse the finding and the sentence and discharge or acquit the accused or order a re-trial. The Appellate Court can also order commitment of the appellant to the Court of Session. The Appellate Court has powers to alter the finding maintaining the sentence and to reduce the sentence but it has no power to enhance the same.

Appeal to the High Court.—The High Court in case of an appeal from a jury trial, cannot alter the verdict of the jury unless in its opinion such a verdict is erroneous owing to a misdirection by the Judge or where the jury did not apparently understand the law. Where the conviction is set aside on the ground of misdirection, the Court can order a re-trial[3].

Commitment in appeal.—If the Appellate Court finds that the accused *prima facie* committed an offence triable by the Court of Session, it can order commitment. But the High Courts are not unanimous if the offence be not triable exclusively by the Court of Session[4].

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1. *Imperatrix* v. *Shivram Gundo*, 6 Bom. 14.
2. *Shallu* v. *E.*, A. I. R. 1935 Sind 84 (F. B.).
3. *Sadhu Sakeh* v. *Emp.*, 4 C. W. N. 576.
4. *Queen Emp.* v. *Sukha*, 8 All. 14.=5 A.W.N. (1885) 298. *Misrilal* v. *Lachmi*, 23 Cal. 350.

Where the Appellate Court orders commitment further enquiry is not necessary[1].

What amounts to enhancement of sentence.—If sentence of imprisonment is reduced but whipping is ordered it amounts to enhancement[2]. If rigorous imprisonment is ordered in lieu of simple imprisonment it is enhancement[3]. If imprisonment is reduced but solitary confinement is ordered that is enhancement[4]. If fine is altered to imprisonment it amounts to enhancement[5].

Notice.—If the appeal is admitted notice is given to the appellant and to the Magistrate who convicted the accused. Then the appellant or his pleader and the Crown pleader (if any), or pleader for the complainant (if any) are heard and the judgment is delivered.

The Appellate Court forwards a copy of the judgment (or order) passed by it to the trial Court.

Power of Appellate Court to take additional evidence.—An Appellate Court, if it thinks fit do to so can take additional evidence, or direct it to be taken by a Magistrate. The additional evidence has to be taken in the presence of the accused or his pleader. The discretion of the Court to take additional evidence cannot be exercised to the prejudice of the

1 *Anonymous*, 2 Weir 479.
2. *Appu*, 2 Weir 487.
3. *Emp.* v. *Mahamad Yakub*, 45 All 594.
4. *Reman*, 1890 A. W. N. 170.
5. *Q. E.* v. *Dansang Dala*, 18 Bom. 751.

accused[1]. The law does not empower an Appellate Court to take additional evidence where there is no evidence for supporting the conviction. But where there is *prima facie* evidence against the accused and the Appellate Court thinks further evidence is necessary it can take further evidence. The Appellate Court then comes to a finding on the old as well as on the new evidence.

Abatement of appeal : Death.—An appeal abates if the appellant dies.

CHAPTER II.

REVISION : FURTHER ENQUIRY : POWER TO SUSPEND OR REMIT SENTENCE.

Revision.—The provision as to revision of judgment or order of a subordinate Court is contained in Section 435 Cr. P. C. As the section is important it is reproduced below :

"(1) The High Court or any Sessions Judge or District Magistrate or any Sub-divisional Magistrate empowered by the Local Government in this behalf may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the

1. *Varadarajulu*, 42 Mad 885.

purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, *when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*

Explanation.—All Magistrates whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 437.

(2) If any *Sub-divisional Magistrate* acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper or that any such proceedings are irregular, he *shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.*

(3) *Omitted.*

(4) If an application under this section has been made either to the Sessions Judge or to the District Magistrate, no further application shall be entertained by the other of them[1]".

Notes.—The Sessions Judge, the District Magistrate and the High Court have concurrent revisional jurisdiction, but the practice of all the High Courts on this point is that the High Court will not entertain an application for revision save on some special grounds

Section 435 Cr. P. C.

and unless a previous application shall have been made either to the District Judge or to the District Magistrate[1]. The High Court does not ordinarily allow a point to be raised which was not taken up by the petitioner before the Sessions Judge or the District Magistrate[2]. Under the old Code, the revisional powers existed only in respect of some judicial proceedings but under the present law the High Courts may call for records of any proceeding (including proceedings under Sections 143, 144, 476) and examine them. If the Sessions Judge makes a reference and it is rejected, still the High Court may entertain an application for revision[3]. Ordinarily only one application can be made either before a Sessions Judge or a District Magistrate. A District Magistrate being subordinate to the Sessions Judge for the purposes of Section 435 Cr. P. C., he cannot refer the proceedings of a Sessions Court to the High Court[4]. The High Court can call for the records of proceedings of a Presidency Magistrate[5]. As the District Magistrate and the Sessions Judge have co-ordinate jurisdiction—an application for revision after it is rejected by one cannot be entertained by

1. *Queen Emp.* v. *Reolah,* 14 Cal. 887.
   Sheriff Ahmed v. *Quabul,* 43 All. 497, 22 Cr. L. J. 715.
   Bepin Behari, 3 P. L. J. 302.
2. *Emp.* v. *Bhuremal,* 45 All. 526.
3. *Emp.* v. *Khonaram,* 45 All. 11.
4. *Emp.* v. *Labo,* 41 Bom. 47.
5. *Malik Pratap* v. *Khan Mahmed,* 36 Cal. 994 (=13 C. W. N. 1221 =3 I. C. 861=10 Cr. L. J. 385).

the other, unless the application was dismissed for want of prosecution. A Sessions Judge or a District Magistrate, if he thinks fit to do so, may report to the High Court, the result of his examination of the record —recommending that the sentence or order passed by the Subordinate Court may be reversed or altered and may also order that the execution of such sentence be suspended pending the orders of the High Court and can order release of the accused on bail. This power can be exercised by the Additional Sessions Judge, where a revision application is transferred to him for hearing. A District Magistrate or a Sessions Judge cannot make a reference if he himself can pass necessary orders in the case[1]. A case cannot be reported to the High Court unless it is *prima facie* evident that the conviction is bad in law[2]. Before making the reference a Sessions Judge has to call for an explanation from the lower Court and submit the explanation along with his letter of reference to the High Court. The High Court in revision is not confined to the question of law alone but in a fit case can also consider the facts[3].

Further enquiry.—On an examination of any record under Section 435 the High Court or the Sessions Judge or the District Magistrate may order further enquiry into any complaint which has been

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1. *Bidhu* v. *Mati*, 28 Cal. 102
2. *Sudaman* v. *Emp.*; 49 All. 551, 28 Cr. L. J. 399 (400).
3. *Shiamsundar*, 20 A. L. J. 2[illegible]6, 23 Cr. L. J. 241 A. I. R. 1922, All. 122.

dismissed under Section 203 Cr. P. C., (after examination of the complaint) or under sub-section (3) of Section 204 (for failure to deposit necessary process fees), or into the case of any person accused of an offence who has been discharged. No order can, however, be made for further enquiry without giving the accused an opportunity to show cause[1].

Powers of Sessions Judge and District Magistrate are co-ordinate.—The powers of the District Magistrate and the Sessions Judge being co-ordinate—where a District Magistrate has directed a judicial enquiry, the Sessions Judge is not competent to pass any further order[2]. Both the Sessions Judge and the District Magistrate are competent under Section 436 Cr. P. C., to order further enquiry, but the *Sessions Judge has no jurisdiction to review an order made by a District Magistrate refusing to order a further enquiry.* It has been *held* by Sir Comer Petheram, Kt., C. J., and Beverley J. in the case of *Darbari Mondal* v. *Jagoo Lal*[3] that the Session Judge can, in such a case, refer the matter to the High Court (under Section 438) for orders. The District Magistrate is not competent to recommend the revision of orders passed by the Sessions Judge in appeal[4].

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1. Vide Section 436 Cr. P. C. Read *Haridas* v. *Saritulla*, 15 Cal. 608.
2. *Siddik* v. *Shaik Chakauri*, 17 C. W. N. 451.
3. 22 Cal. 573.
4. *E.* v. *Baijnath Pershad*, 14 Pat. L. T. 364 = A. I. R. 1933 Pat. 305.

Which Court should make further enquiry.—The further enquiry, when ordered, can be made by the same Magistrate who made the first enquiry. This is desirable when it becomes necessary to take additional evidence[1].

Further enquiry—against whom can be ordered.—A Court has no jurisdiction to direct a further enquiry in respect of a person who was not named in the petition of complaint and against whom no regular process was issued[2].

Further enquiry.—when refused. Proceedings under Sections 110 and 133 Cr. P. C.—The Revisional Court does not ordinarily interfere and pass an order for further enquiry when the Magistrate after discussing the evidence in detail has assigned good reasons for the order of discharge[3]. It has been *held* in the case of *Dayanath Taluqdar* v. *Emp.*,[4] and other cases[5] that a District Magistrate has no powers to order a further enquiry in a proceeding under Section 110 Cr. P. C. or in a proceeding under Section 133 Cr. P. C. (removal of nuisance). The reason is that the persons against whom such proceedings are started cannot be said to be accused persons—since they cannot be said to have committed any offence.

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1. *Brij Kishore* v. *Gopal*, 11 C. W. N. 316.
2. *Ambar Ali* v. *Anjab Ali*, 39 Cal. 238 =13 Cr. L. J. 304=14 I. C. 768.
3. *Abdul Rashid Sheikh* v. *Momtaz Sheikh*, 38 C. L. J. 206.
4. 33 Cal. 8.
5. *Queen Emp.* v. *Imam Mondal*, 27 Cal. 662. *Sreenath* v. *Ainaddi*, 24 Cal. 395=1 C. W. N. 217. *E.* v. *Roshan Sing*, 46 All. 235.

Order of commitment in revision.—If a Sessions Judge or a District Magistrate, on examining a record of a case, thinks that the case is triable exclusively by the Court of Session and that the accused was improperly discharged, the Sessions Judge or the District Magistrate may order commitment of the accused to the Court of Session. No such order can be passed without giving an opportunity to the accused of being heard. If it appears that the accused committed some offence other than that with which he was charged, the Sessions Judge or the District Magistrate may order the inferior Court to enquire into such offence. It is competent for a District Magistrate, in a fit case, to order further enquiry instead of committing the accused direct to the Court of Session[1].

General powers of the High Court on revision.—The High Court on revision[2] may exercise all powers conferred on a Court of Appeal by Sections 423, 426, 427, 428 or on a Court by Section 338 and may enhance sentence, but cannot convert a finding of acquittal into one of conviction. Where an aggrieved party has the right of appeal and no appeal is filed, no proceedings by way of revision is entertained by the High Court at the instance of such a party. In the case of *Hariprasad* v. *E.*, it has been *observed* by a Full Bench of the Calcutta High Court that in interpreting Section 439, Sections 435 and

1. *Queen Emp.* v. *Moniruddin Mondal.* 18 Cal. 75.
2. Section 439 Cr. P. C.

439 must be read together. It has further been *held* in the said case that in case of an order passed by a Civil or Revenue Court under Section 476 Cr. P. C, Section 439 has no application, but that the High Court can exercise the powers of revision vested in it by Section 115 of the Civil Procedure Code or Section 15 of the High Courts Act. A Bench of the High Court exercising Criminal jurisdiction cannot deal with such matter unless authorised to do so by the Chief Justice under Section 14 of the High Courts Act[1].

When the High Court interferes in revision.—The High Court may exercise its power of revision when moved or on its own initiative on perusing the record. The High Court does not interfere in revision where a different view might have been taken, but interferes only where there is clear error in law or in the procedure or where the subordinate Court failed to consider some important evidence[2].

Pending proceeding—interference with.—The High Court will not interfere in a case during its pendency in a subordinate Court unless it is of an exceptional nature ; and one test of its being of such a nature is that a bare statement of the facts of the case without any elaborate argument is sufficient to convince that the case is a fit one for its interference at an intermediate stage[3].

Enhancement of sentence : Notice to show cause.—The accused in showing cause against enhancement

1. 40 Cal. 477.
2. *Nizamuddi v. King Emp.*, 23 C. W. N. 488.
3. *Choa Lal v. Anant Prosad*, 25 Cal. 233.

of sentence in a conviction in a Jury trial cannot go behind the Jury's verdict and show upon the evidence that the conviction was wrong[1].

Acquittal : application for revision by private prosecutor.—There is nothing to prevent the High Court from interfering in revision with an order of acquittal at the instance of a private prosecutor[2].

Power to suspend or remit sentence by the Government.—When any person has been sentenced to punishment for an offence, the Governor-in-Council or the Local Government may, at any time, without condition or upon any condition which the accused sentenced accepts, suspend the execution of the sentence or remit the whole or any part of the punishment to which he has been sentenced, but this does not interfere with the right of His Majesty or the Governor-General to grant pardons, reprieves, respites or remissions of punishments[3]. Any Court may report any extraordinary circumstances to the Governor, for mitigation of the sentence passed on a prisoner[4]. In Bengal such recommendations are made through the High Court.

The Governor-General in Council or the Local Government may commute any one of the following sentences for any other mentioned after it ; *e.g.*, death,

1. *Alaf Shaik* v. *E.*, 62 Cal. 952 (Judgment of Costello & M. C. Ghosh JJ.)
2. *President, Municipal Committee* v. *Banshidhar*, 151 I. C. 781. (Read 56 Cal. 921, 5 Lah. 16).
3. Section 401 Cr. P. C.
4. *Queen Empress* v. *Kadar*, 23 Cal. 604.

transportation, penal servitude, rigorous imprisonment, simple imprisonment and fine[1].

CHAPTER III.

LOCAL INVESTIGATION—EXAMINATION OF MATERIAL WITNESS & DISPOSAL OF PROPERTY.

Local investigation.—Any Judge or Magistrate in a case may, after giving due notice to the parties, visit and inspect the place of occurrence or any other place necessary for appreciating the evidence in the case. In a Jury trial, the Judge and Jury may make a local inspection. A Magistrate may, if he thinks fit to do so, inspect the place of the occurrence of an offence, before trial; he does not, merely by doing so, disqualify himself from trying the case. Every possible precaution should be taken that the inspection is confined only to a view of the local features. An immediate report of what is seen should be placed on the record, and laid open to the scrutiny of the parties[2].

The Court's power to summon a material witness.—At a trial before the High Court or the Court of

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1. Section 402 Cr. P. C.
2. *Babbon Sheik* v. *Emp.*, 37 Cal. 340=14 C.W.N. 422=11 Cr.L.J. 121=5 I. C. 365.

Session, the Crown cannot demand as of right that any witness who was not examined by the committing Magistrate either before commitment, or under Section 219 of the Code, after it, should be called and examined. The Court may call and examine such a witness if it considers it necessary in the interests of justice[1]. If a witness is called and examined by the Court, the prisoner should be allowed an opportunity to cross-examine him[2]. A committing Magistrate may, under Section 540 Cr. P. C., examine the witnesses examined by the Police during the investigation[3].

Disposal of property.—The Court may order for the disposal and custody of any property regarding which any offence appears to have been committed, pending the trial of a case. If no offence was committed the property seized from the custody of an accused should be returned to him. The complainant, if he claims the property, may seek relief in Civil Court[4]. A subordinate Magistrate may refer, under Section 518 Cr. P. C., any case regarding the disposal of property to the District or Sub-divisional Magistrate for orders. A Magistrate, under Section 521 Cr. P. C., may

1. Sec. 540 Cr. P. C., *Q. Emp.* v. *G. W. Hayfield,* 14 All. 212=12 A. W. N. (1892) 63.
2. In matter of *Emp.* v. *Girish Chandra Talukdar*, 5 Cal. 614=5 C. L. R. 364.
3. *Bhagunti* v. *E.,* 9 Luck. 638.
4. Sections 516 (A) & 517 Cr. P. C. and *Kedar Biswas* v. *Mathur Nath Mittra,* 18 C. W. N. 959. *Nani Lal* v. *Emp.*, 24 Cr. L. J. 804 (All.).

order destruction of libellous matter, and can also pass orders, under Section 522 Cr. P. C., for restoring possession of any immoveable property to a person dispossessed therefrom by force or show of force or criminal intimidation. An order under Section 522 Cr. P. C., may be made on a conviction of the accused.

CHAPTER IV.

INHERENT POWER OF HIGH COURT TO STAY PROCEEDINGS.

Inherent power of High Court : Stay of Criminal proceedings pending a Civil case.—Nothing in the Code of Criminal Procedure shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order passed under the Cr. P. Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice[1]. The High Court by exercising the inherent powers cannot order any thing to be done contrary to the provisions of the Cr. P. C.[2] Under the inherent powers the High Court can stay a criminal case during the pendency of a civil action relating to the same matter[3].

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1. Section 561 Cr. P. C.
2. *In re Gurunath*, 26 Bom. L. R. 719; 25 Cr. L. J. 1293.
3. *Kanhaiyalal* v. *Bhagwan Das*, 48 All. 60.

PART III.

THE INDIAN PENAL CODE.

(*Important portions*)

WITH COPIOUS NOTES.

PART III.

CHAPTER I.

INDIAN PENAL CODE.

(A)

I like to give below an idea of the different Chapters of the Indian Penal Code dealing with offences of various kinds.

The Scheme of the Code.

Chapter I.	(Secs. 1 to 5)	... Introduction.
Chapter II.	(Secs. 6 to 52)	... General explanations.
Chapter III.	(Secs. 53 to 75)	... Punishments.
Chapter IV.	(Secs. 76 to 95)	... General exceptions.
"	(Secs. 96 to 106)	... Right of private defence.
Chapter V.	(Secs. 107 to 120)	... Abetment.
" V-A.	(Secs. 120-A to 120-B)	Criminal conspiracy.
Chapter VI.	(Secs. 121 to 130)	... Offences against State.
Chapter VII.	(Secs. 131 to 140)	... Offences relating to the Army, Navy and Air Force.
Chapter VIII.	(Secs. 141 to 160)	... Offences against the Public tranquillity.

Chapter IX.	(Secs. 161 to 171) ...	Offence by or relating to public servants.
Chapter IX-A.	(Secs. 171-A to 171 171-I) ..	Offences relating to elections.
Chapter X.	(Secs 172 to 190) ...	Contempts of the lawful authority of the public servants
Chapter XI.	(Secs 191 to 229) ...	False evidence and offences against public justice
Chapter XII.	(Secs. 230 to 263-A) ...	Offences relating to coin and Government stamps
Chapter XIII.	(Secs 264 to 267) ..	Offences relating to weights and measures.
Chapter XIV.	(Secs 268 to 294-A) .	Offences affecting the public health, safety, convenience, decency & morals.
Chapter XV.	(Secs. 295 to 298) ...	Offences relating to religion.
Chapter XVI.	(Secs. 299 to 311) ...	Offences affecting the human body.

Chapter XVI.	(Secs 312 to 318)	...	The causing of miscarraige, of injuries to unborn children, of the exposure of infants and of the concealment of births.
" "	(Secs. 319 to 338)	...	Hurt.
" "	(Secs 339 to 348)	...	Wrongful restraint and wrongful confinement.
" "	(Secs. 349 to 358)	...	Criminal force and assault.
" "	(Secs. 359 to 374)	...	Kidnapping, abduction, slavery and forced labour.
" "	(Secs. 375 to 376)	...	Rape.
" "	(Secs. 377)	...	Unnatural offences.
Chapter XVII.	(Secs. 378 to 382)	...	Offences against property, theft.
" "	(Secs. 383 to 389)	...	Extortion.
" "	(Secs. 390 to 402)	...	Robbery and dacoity.
" "	(Secs. 403 to 404)	...	Criminal misappropriation of property.
" "	(Secs. 405 to 409)	...	Criminal breach of trust.

Chapter XVII.	(Secs. 410 to 414)	...	Receiving of stolen property.
" "	(Secs. 415 to 420)	..	Cheating.
" "	(Secs. 421 to 424)	...	Fraudulent deeds and disposition of property.
" "	(Secs. 425 to 440)	...	Mischief.
" "	(Secs. 441 to 462)	...	Criminal trespass.
Chapter XVIII.	(Secs 463 to 477-A)	...	Offences relating to documents and to trade or property mark.
" "	(Secs. 478 to 489)	...	Trade, property and other marks
" "	(Secs. 489-A to 489-D)		Currency Notes and Bank Notes
Chapter XIX.	(Secs 490 to 492)	...	Criminal breach of contract of service.
Chapter XX.	(Secs. 493 to 498)	...	Offences relating to marriage.
Chapter XXI.	(Secs. 499 to 502)	...	Defamation.
Chapter XXII.	(Secs. 503 to 510)	...	Criminal intimidation, insult and annoyance.
Chapter XXIII.	(Sec. 511)	...	Attempts to commit offences.

(B)

DEFINITION : COMMON INTENTION : PUNISHMENT.

Definitions.—The Penal Code defines offences which are punishable under it.

Throughout the Penal Code every definition of an offence shall be understood subject to the *General Exceptions* contained in the Chapter IV[1]. Any section defining an offence does not say that a child under 7 years of age cannot commit the offence. But the definition has to be understood subject to the "*General Exceptions*" which provide that 'nothing shall be an offence which is done by a child under 7 years of age'. Chapter II of the I. P. C., contains the definitions of the terms used in the body of the I. P. C. In the definition of theft, the words "*moveable property*" appear. "*Moveable property*" has been defined in Section 22. In many sections "*wrongful loss*" and "*wrongful gain*" appear. These have been defined in Section 23. The terms "*dishonestly*" and "*fraudulently*" are the essence of the various offences. These have been defined in Sections 24 and 25 respectively. In an offence relating to coin the word "*counterfeit*" appears in the definition. The said word has been defined in Section 28. The word "*document*" finds mention in various sections. The explanation of the word "*document*" will be found in Section 29. Similar words mentioned in the various sections have been defined in Chapter, II, I. P. C.

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1. Section 6 I. P. C.

Act done in the furtherance of a common intention.—When a criminal act is done by several persons in furtherance of a *common intention* each of such persons is liable for that act in the same manner as if it has been done by him alone[1] Section 34, I. P. C., does not define any offence but lays down the principle on which each person, committing an act in furtherance of some *intention*, will be liable Sometimes it is difficult to ascertain what individual part was taken by a member of a party in committing an offence. Where several persons assault and beat a man to death—each one of them can be convicted of murder under Section 34, I. P. C , read with Section 302, I. P. C[2]. If several persons go out together to apprehend a man and take him to the *Thana* on a charge of theft, and some of the party, in the presence of the others, assault and illtreat the man, then all men present do not necessarily, by their presence, assist every act done Consequently, all of them cannot be liable as principals for assault, if the *common intention* to assault the man was not present[3]. The mere circumstance of a person being present on an unlawful occasion does not raise a presumption of that person's complicity in an offence then committed so as to make Section 34 of the Indian Penal Code applicable[4].

1. Section 34 I. P. C.
2. *Gour Chunder Das*, 24 W. R. 5.
3. *Q. Emp.* v. *Gora Chand Gopee*, 5 W. R. 45.
4. *Reg.* v. *Farler*, 8 C. & P. 106 referred to in *Q. E.* v. *Magan Lal*, 14 Bom. 115.

Similarly, whenever an act, which is criminal only by reason of its being done with a criminal knowledge or *intention* is done by several persons, each of such persons who joins in the act with such knowledge or *intention* is liable for the act in the same manner as if the act were done by him alone with that knowledge or *intention*[1]. Section 37, I. P. C., says that when an offence is committed by means of several acts, whoever *intentionally* co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here, A and B intended to co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate. Three brothers attacked with *lathi* a fourth brother against whom they bore a grudge, and beat him with great severity so that he died shortly afterwards. His skull was badly fractured, and numerous other injuries were inflicted upon him. It did not appear which injuries were caused by which of the assailants, but evidence showed that they were acting in

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1. Section 35 I. P. C.

concert and intended to cause such bodily injury as was likely to cause death. In this case all the three assailants were held guilty of murder[1]. For meaning of criminal acts done by several persons and applicability of Sections 35, 37 and 38 I. P. C., read the judgment of the Full Bench in the case of *K. E.* v. *Barendra Kumar Ghose*, commonly known as the *Sakharitola Post Master murder case*[2].

Good faith.—You will find the term *"good faith"* in several Sections of the I. P. C. Nothing is said to be done or believed in *good faith* which is done or believed without due care and attention[3]. All acts should be done with due care and attention. But such care or attention cannot be of equal standard from all persons. So the question of *"good faith"* has to be judged with reference to the position of the accused and the circumstances under which the act was done[4]. *For meaning of "good faith" read Gayadin* v. *K. E*[5].

Punishment.—The Penal Code prescribes the following punishments :—

Death, transportation, penal servitude, imprisonment of two descriptions namely, (1) rigourous imprisionment, that is with hard labour, (2) simple imprisonment ; forfeiture of property and fine. Besides the above, whipping may be inflicted under the

1. *Ram Newax* v. *E.*, 35 All. 506.
2. 28 C. W. N. 170.
3. Section 52 I. P. C.
4. *Bhaun Jivaji* v. *Mulji Dayal*, 12 Bom. 377.
5. 9 Luck. 519.

Whipping Act of 1909. The Local Government may commute the sentence of death to transportation for life. The Local Government may also commute the sentence of transportation for life into imprisonment not exceeding 14 years. An offender who can be sentenced to imprisonment for 7 years or more can, in terms of Section 59, I. P. C., be sentenced to transportation. The sentence of imprisonment may be wholly or partly rigourous or simple. The amount of fine may be unlimited. But in no case it should be excessive. If an offender be sentenced to fine —he can, in default of payment of fine, be sentenced to imprisonment as laid down in Sections 64 and 65 I.P.C. The imprisonment, which is imposed in default of payment of fine, shall terminate whenever the fine is paid or levied by process of law. The sentence of imprisonment for default in payment of fine may be proportionately reduced on proportionate payment of fine[1]. For limit of punishment of offence which is made up of several offences see Section 71, I. P. C.

Solitary confinement.—Whenever any person is convicted of an offence for which under the I P. C., the Court has power to sentence him to rigourous imprisonment, the Court may by its sentence order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months on the whole, in the following scale, that is to say :—

(a) A time not exceeding one month if the term of imprisonment shall not exceed six months ;

1. Vide Section 69 I. P. C.

(b) A time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year :

(c) A time not exceeding three months if the term of imprisonment shall exceed one year[1]. Solitary confinement in no case shall exceed 14 days at a time.

Enhanced punishment in case of previous conviction.—Provisions for enhanced punishment for certain offenders who were previously punished with imprisonment for similar offence or offences have been embodied in Section 75, I. P. C. A person is not liable to enhanced punishment unless the subsequent punishment be for an offence which is committed after the last offence. The Prosecution is to prove previous conviction in the way provided for in the Cr. P. C. The matter has been dealt with before[2]. It is necessary that a separate charge under Section 75, I. P. C, for enhanced punishment be framed and the prisoner be tried after he has been found guilty of the offence.

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1. Section 73 I. P. C.
2. See Part II—Chapter VI (Page 140) and Chapter XVI (Page 260)

CHAPTER II.

CASES—BY WHOM AND WHERE TRIABLE.

Charts given below will enable a junior practitioner to find out the following without difficulty :—

(1) The Court where any particular offence is triable.

(2) Whether the offence can be tried as a summons or as a warrant case.

(3) Whether the offence is bailable or not.

(4) Whether the offence is compoundable or not.

(5) Whether the case is a cognizable one or not.

(6) The offences punishable with fine only.

Offences by whom triable.

(A)

Offences under the following sections of the I. P. C., may be tried by any Magistrate.—140, 143, 144, 145, 147, 151, 153, 160, 170, 171, 172, 174, 277, 278, 279, 285, 286, 289, 290, 294-A, 323, 334, 336, 341, 352, 356, 357, 358, 374, 379, 380, 403, 426, 447, 448, 451, 504, 510.

(B)

Offences under the following sections of the I. P. C., may be tried by First or Second Class Magistrates.— 135, 136, 137, 138, 154, 155, 156, 157, 158, 165, 166, 173, 175, 176, 177, 178, 179, 180, 182, 183, 184, 185, 186, 187, 188, 189, 190, 202, 203, 206, 207, 217, 221-A, 241, 254, 259, 260, 261, 262, 264, 265, 266, 267, 269, 270, 271, 272, 273, 274, 275, 276, 280, 282, 283, 284, 287, 288, 291, 295, 296,

297, 298, 309, 324, 325, 335, 337, 338, 342, 343, 353, 354, 355, 381, 384, 385, 404, 405, 406, 408, 411, 414, 417, 418, 419, 421, 422, 423, 424, 427, 428, 429, 430, 431, 432, 434, 451, 452, 453, 454, 456, 457, 461, 462, 482, 483, 486, 487, 488, 489, 490, 491, 492, 498, 508

(C)

Offences under the following sections of the I. P. C., are to be tried by First Class Magistrates only.—124-A, 129, 133, 148, 152, 153-A, 161, 162, 163, 164, 167, 168, 169, 171-E, 171-F, 171-G, 171-H, 171-I, 181, 193, 196, 197, 198, 199, 200, 201-A, 204, 205, 208, 209, 210, 211, 212, 213-A, 214-A, 215, 216, 221, 222-A, 223, 224, 225, 229, 233, 235, 237, 239, 240, 242, 243, 246, 247, 248, 249, 250, 251, 252, 253, 263, 292, 293, 304-A, 317, 318, 326, 332, 344, 345, 346, 347, 348, 363, 365, 368, 369, 372, 373, 377, 382, 392, 393, 394, 401, 407, 409, 420, 435, 440, 455, 458, 465, 468, 469, 477-A, 484, 485, 494, 497, 500, 501, 502, 505, 506, 507, 509.

(D)

Offences under the following sections of the I. P. C., are tried exclusively by the Court of Sessions.—121 to 124, 125, to 128, 130, 131, 132, 134, 194, 195, 201, 211 (partly), 213, 214, 218 to 221, 222, 226, 231, 232, 234, 235 (if Queen's coin), 236, 238, 244, 245, 255, 256 to 258, 302 to 304, 305 to 308, 310 to 316, 327 to 331, 333, 364, 366-A, 366-B, 367, 370, 376, 386 to 391, 395 to 400, 402, 412, 413, 433, 436 to 439, 449, 450, 459, 460, 466, 467, 471 (partly), 472 to 477, 489-A to 489-D, 492, 493, 495, 496, 511 (partly).

(E)

Offences under the following sections of the I. P. C., are to be tried as warrant cases.—115, 136, 144-148, 152,

153, 153-A, 159, 161-170, 177, 181, 189-201, 203-227, 229-267, 270, 281, 295-333, 335, 338, 342-348, 353-357, 363-424, 427-440, 448-489, 493-509, 511.

(F)

Offences under the following sections of the I. P. C., are to be tried as summons cases.—137-143, 151, 153-158, 160, 171-180, 182-188, 202, 225-B, 228, 263-A, 269, 271 to 280, 282-294A, 334, 336, 337, 341, 352, 358, 426, 447, 490-492, 510.

(G)

Offences under the following sections of the I. P. C., are to be tried sometimes as warrant cases and sometimes as summons cases.—153 to 177, 225.

(H)

Fine only.

Offences under the following sections of the I. P. C., are punishable with fine only.—137, 154, 155, 156, 171-G, 171-H, 171-I, 263-A, 278, 282, 290, 294-A (partly).

(I)

Offences under the following sections of the I. P. C., are bailable.—119 (partly), 120-B (partly), 129, 135 to 138, 140, 143, 144, 145, 147, 148, 149 (partly), 150 (partly) 151, 152, 153, 154, 155, 156, 157, 158, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 171-E, 171-F, 171-G, 171-H, 171-I, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 193, 196 (may be), 197 to 221, 222 (partly), 223, 224, 225, 225-A, 225-B, 228, 229, 264 to 294-A, 295 (not 295-A), 296, 297, 298, 304-A, 308, 309, 312, 317, 318, 323, 324, 325, 330, 332, 334 to

338, 341 to 348, 352 to 355, 357, 358, 363, 370, 374, 376, 384, 385, 388, 389, 403, 404, 417 to 424, 426, 427, 428, 429, 430 to 435, 447, 448, 451, 461, 462, 465, 469, 471 to 475, 477-A, 482 to 489, 489-C, 490 to 492, 494, 495, 497, 498, 500, 501, 502, 504, 506, 507, 508, 509, 510.

N.B. :—The rest of the offences under the I. P. C., are non-bailable. Abetment, conspiracy, and attempt cases are bailable or non-bailable according to the nature of the main offence

(J)

Offences under the following sections of the I. P. C., are compoundable.—323, 324 (with permission of Court), 325 (with permission of Court), 334, 335 (with permission of Court), 337 (with permission of Court), 338 (with permission of Court), 341, 342, 343 (with permission of Court), 346 (with permission of Court), 352, 355, 357 (with permission of Court), 358, 374, 403 (with permission of Court), 417 (with permission of Court), 418 (with permission of Court), 419 (with permission of Court), 420 (with permission of Court), 426 (compoundable when private person is injured), 427 (compoundable when private person is injured), 430 (with permission of Court), 447, 448, 451 (with permission of Court), 482 (with permission of Court), 483 (with permission of Court), 486 (with permission of Court), 490-492, 494 (with permission of Court), 497 to 498, 500 to 502, 504, 506, 508, 509 (with permission of Court).

N.B.—The rest of the offences under the I. P. C., are not compoundable. Offences relating to abetment,

conspiracy and attempt are compoundable or not according to the nature of the main offence.

(K)

Offences under the following sections of the I. P. C., are cognizable, *i.e.*, **in these cases a Police-officer may arrest without a warrant.**—120-B (may be) 131 to 136, 138, 140, 143 to 145, 147 to 148, 149 (may be), 150 to 153, 157 to 158, 170 to 171, 213, 215 to 216-A, 224 to 225, 225-B to 226, 231 to 263-A, 269 to 270, 277, 279 to 283, 285 to 286, 289, 291 to 294, 295, 296, 297, 302 to 309, 311, 317 to 318, 324 to 333, 335 to 338, 341 to 344, 346 to 348, 356 to 357, 363 to 369, 371 to 373, 376 (partly), 377, 379 to 382, 392 to 402, 406 to 409, 411 to 414, 419 to 420, 428 to 430, 431 to 433, 435 to 440, 447 to 462, 467 (partly), 471 (partly), 489-A to 489-D, 511 (may be).

N.B. All other offences are non-cognizable.

CHAPTER III.

GENERAL EXCEPTIONS.

The Chapter on 'General Exceptions' as stated before obviates the necessity of repeating the limitation in case of every offence. The following general exceptions have been mentioned in Chapter IV of the Indian Penal Code.

No offence : (1) An act done by a person bound, or by mistake of fact believing himself to be bound by law. (Sec. 76).

(2) An act of a Judge acting in judicial capacity. (Sec. 77).

(3) An act done by a person pursuant to the judgment or order of the Court. (Sec. 78).

(4) An act done by person justified, or by mistake of fact believing himself justified by law. (Sec 79).

(5) Accident in doing a lawful act. (Sec 80).

(6) An act likely to cause harm, but done without any criminal intent, and to prevent other harm. (Sec. 81).

There is no justification for intentionally causing harm.

Note.—*Motive,* though not a *sine qua non* for bringing the offence home to the accused, is relevant and important on the question of *intention.* It is not always easy to apply the rule of English law, which runs to the effect that a man must be presumed to intend the natural or probable consequences of his act, to the Indian Criminal Law in view of the distinction that the Indian Penal Code makes between "*intention*" and "*knowledge*"[1].

(7) An act of a child under seven years of age. (Sec. 82).

(8) An act of a child above seven and under twelve years of immature understanding. (Sec. 83).

Note.—The law presumes maturity in child over seven years and it is for the defence to prove that the child is of immature understanding. When the

1. Judgment of Mukherjee J., *in re: Hazrat Gulkhan,* 32 C. W. N. 346=47 C. L. J. 240.

accused is under 12 years of age, the Magistrate has to come to a finding that the accused attained maturity of understanding and was able to judge the nature and consequence of his act[1].

(9) An act of a person of unsound mind. (Sec. 84).

Note.—A person, whose cognitive faculty is not so impaired as to make it impossible for him to know the nature of his act or understand that he was doing what was wrong or contrary to law, is not exempted from criminal responsibility under Section 84, I. P. C. The burden of proving unsoundness of mind rests on the accused[2]. A person subject to insane impulses, but whose cognitive faculties appear to be unimpaired, is not according to Section 84 of the Indian Penal Code, exempt from criminal liability[3]. The law presumes every person to be sane[4].

Insanity : mental and intellectual.—On this point I like to quote the following portions from the judgment of O'Kinely and Banerjee JJ., in the case of *Q. Emp. v. Kader Nasyer Shah*[5].

"We learn, however, from medical and legal authorities who considered the subject of responsibility in Mental disease (see Mandsley's Responsibility in Mental disease,—Ch. III., Bucknill and Tukes'

1. *Q. Emp. v. Makimuddin*, 27 Cal. 134
2. *Re : Ram Chandra Dass*, 23 Cal. 621, 29 C. L. J. 209, 500 I. C. 991, 20 Cr. L. J. 383.
3. *Q. Emp. v. Kadar Nasyer Shah*, 23 Cal. 604.
4. *Sheodin*, 21 A. W. N. 132.
5. 23 Cal. 604.

Psychological Medicine, pp. 269, and Stephen's History of the Criminal Law of England, Vol. II, Ch. XIX) that insanity affects not only the cognitive faculties of the mind which guide our actions, but also emotions which prompt our actions, and the will by which our actions are performed. It may be that our law, like the law of England, limits non-liability only to those cases in which insanity affects the cognitive faculties; because it is thought that those are the cases to which the exemption rightly applies, and the cases in which insanity affects only the emotions and the will, subjecting the offender to impulses whilst it leaves the cognitive faculties unimpaired, have been left outside the exception, because it has been thought that the object of the Criminal Law is to make people control their insane as well as their sane impulses, or to use the words of Lord Justice Bramwell in *Reg.* v. *Hamphreys*[1] (see Taylor's Manual of Medical Jurisprudence, 10th Edition, pp. 745) "to guard against mischievous propensities and homicidal impulses". Whether this is the proper view to be taken of the matter, or whether the exemption ought to be extended as well to the cases in which insanity affects the emotions and will as to those in which it affects the cognitive faculties, is a question which is not for us to consider here. There are no doubt eminent authorities who are in favour of extending the exemption to those cases, but our duty is to administer the law as we find it. It might be said of

1. 10 Clark and Finnelly, 200.

our law as it has been said of the law of England by Sir J. Stephen (see his History of the Criminal Law of England, Vol. II, Ch. XIX, pp. 167) that even as it stands, the law extends the exemption as well to cases where insanity affects the offender's will and emotions as to those where it affects his cognitive faculties, because where the will and emotions are affected—the offender being subject to insane impulses, it is difficult to say that his cognitive faculties are not affected. In extreme cases, that may be true ; but we are not prepared to accept the view as generally correct that a person is entitled to exemption from criminal liability under our law in cases in which it is only shown that he is subject to insane impulses, notwithstanding that it may appear clear that his cognitive faculties, so far as we can judge from his acts and words, are left unimpaired. To take such a view as this—would be to go against the plain language of Section 84 of the Indian Penal Code, and the accepted interpretation of that section."[1]

Duty of the Court when plea of insanity is taken.—The Court should decide the question of insanity first and then record evidence[2]. This matter has been dealt with in detail in the Procedure Part. (*Part II, Chapter XV* page 189.)

(10) An act of a person incapable of judgment by reason of intoxication caused against his will. (Sec.85).

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1. Read also *Q. Emp.* v. *Lakshman Dagdu*, 10 Bom. 512.
   Q. Emp. v. *Venkatasami*, 12 Mad. 459.=1 Weir 42.
   Q. Emp. v. *Razia Mia*, 22 Cal. 817.
2. Vide Sections 464, 465 Cr. P. C.

Note :—Voluntary intoxication is not a valid excuse for an offence[1].

(11) An offence requiring particular intent or knowledge committed by one who is intoxicated. (Sec 86).

Note :—The above speaks of *knowledge* as well as *intention*. In many cases *intention* forms the essence of the offence Voluntary drunkenness may be taken into account for considering whether the prisoner had the *intention* for committing the offence[2]. The section gives drunkenness—the *knowledge* of the sober man but does not give him that *intention*[3]. A habitual "*ganja*" smoker committed murder in a temporary state of intoxication. The accused was sentenced to transportation for life as there was no evidence of *motive*. It was *observed* that a state of intoxication afforded sufficient excuse for not imposing the extreme penalty[4].

(12) An act not intended and not likely to cause death or grievous hurt done by consent. (Sec. 87).

Note :—Generally speaking every person is free to inflict any suffering or damage he chooses, on his own person and property and if instead of doing this himself, he consents to its being done by another, the doer commits no offence[5].

1. *Q. Emp.* v *Bodhee Khan*, 5 W. R. 79.
2. *In Re : Ram Sahoy Bhur* (1864) W. R. (Gap number) (Cr.) 24.
3. *Tun Baw*, 1912 6 L. B. R. 100, F. B.=5 Bur. L. T. 193= 17 I. C. 800=13 Cr. L.J. 864 (F.B.)
4. *K. Emp. v. Tincouri Dhopi*, (1922) 27 C.W N. 290.
5. Morgan and Macpherson.

(13) An act not intended to cause death done by consent in good faith for the person's benefit[1]. (Sec. 88).

Note :—A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending in good faith, for Z's benefit, performs operation on Z with Z's consent. Z dies. A has committed no offence.

A *Kaviraj* or a quack who has no training in surgery cannot get advantage of Section 88 for causing death by unskilful operation[2].

Where a man of full age (*i.e.*, above 18 years) submits himself to emasculation, performed neither by skilful hand, nor in the least dangerous way, and dies from the injury, the person concerned in the act is guilty of culpable homicide not amounting to murder[3].

A School master inflicting corporal punishment to a child below twelve years for maintaining school discipline comes under this section[4].

Consent.—Consent is no consent if given under fear of injury or a misconception of fact or given by a child under 12 years of age[5]. Consent must be a free consent. Causing miscarriage (unless caused in good faith for saving the life of the woman) is

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1. Section 88 I. P. C.
2. *Sukaroo Kaviraj* v. *Q. Emp.*, 14 Cal. 566.
3. *Q. Emp.* v. *Baboolun Hijrah*, 5 W. R. 7.
4. *Maung Ba Thaung*, (1925) 27 Cr. L. J. 636=89 A. I. R. Rang. 107=3 Rang. 659=94 L. C. 412.
5. Section 90 I. P. C.

an offence by itself and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act[1].

(14) An act done in good faith for the benefit of a person without his consent. (Sec. 92).

Note :—This section has four provisos and explanations. Please read them.

Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z, a mortal wound. A has committed no offence[2].

(15) Communication made in good faith. (Sec. 93.)

A surgeon, in good faith, communicates to a patient, his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence though he knew it to be likely that the communication might cause the patient's death.

(16) An act to which a person is compelled by threats. (Sec. 94.)

Note :—Read the explanations to the section. To obtain the benefit of the exceptions it must be shown that the prisoner was compelled to act as he did from an apprehension that instant death would be the consequence of a refusal[3].

(17) An act causing slight harm (Sec. 95).

1. Illustration to Section 91 I. P. C.
2. Illustration to Section 92 I. P. C.
3. *Queen v. Ahmoo*, 10 W. R. 48

This section is meant to cover cases which fall within the letter but not within the spirit of the law[1].

(18) Nothing is an offence which is done in the exercise of the right of private defence. (Sec. 96.)

Note :—The law as to the right of private defence is to be found in Sections 97-106 I. P. C. (*Vide next Chapter*).

CHAPTER IV.

THE RIGHT OF PRIVATE DEFENCE.

The right of private defence.—This should ordinarily be pleaded by the accused by giving a full account of the occurrence before the Court. It is for the accused to prove his plea[2].

Person in possession of land has right to maintain possession.—In investigating a case of dispute as to land between two parties a Magistrate found that one party was in possession, but there being a charge against both the parties, of rioting under Section 147 of the Indian Penal Code, he punished both the parties. It was *held* that the persons in possession were protected in maintaining their possession[3].

The right of private defence : Scope of such right.—The right of private defence of property only comes

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1. *Jaykrishna Samanta* v. *Emperor*, 21 C. W. N. 95.
2. *Jamsheer Sirdar*, 1 C. L. R. 62.
3. *Toolsee Singh, Thakoor Singh and others*, 10 W. R. 94.

into operation when certain specific offences against property are committed or attempted to be committed. The law on the subject has been discussed by Patterson. and Guha JJ., in the case of the *Supdt. and Remembrancer of Legal Affairs, Bengal* v. *Bhagerati Mahato*[1].

The right of private defence of the body and property.—Every person has a right, subject to the restrictions contained in Section 99, I. P. C. to defend :—

First.—His own body and the body of any other person against any offence affecting the human body ;

Secondly.—The property whether moveable or immoveable of himself or any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit any one of those offences. (Section 97).

The right of private defence not pleaded but raised in the Court by pleader in the course of the arguments : Effect.—If the accused simply plead 'not guilty' and do not admit the act, but the pleader for the defence advances in the course of his arguments the plea of 'the right of private defence,' the duty of the Court is to accept the plea if it appears upon the evidence, either for the prosecution or for the defence, that what was done by the accused was done in self-defence[2].

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1. 51 Cal. 991.
2. *Rasput Gop* v. *Rambhanjan Ojha*, 1 C. W. N. 545.

Plea of private defence and other alternative pleas.— The plea of the right of private defence and other inconsistent pleas in the alternative may be taken by the accused[1].

Acts against which there is no right of private defence : Extent of right.—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of the defence (Sec. 99). For further details regarding resistance to a public servant, etc., read Section 99, I. P. C. Where the complainants are aggressors and the accused acts in the exercise of his right of private defence of person and property and does not inflict more harm than what is necessary, he commits no offence[2].

Resistance to a Civil Court peon—no right of private defence.—An accused person was convicted under Section 353, I. P. C., for assaulting a Civil Court peon when executing a *writ* of delivery of possession in a share in a tank by ordering some fisher-men to cast nets in the tank, for catching fish, on behalf of the decree-holder as provided in the *writ* ; the High Court *held* that whatever mistake there might be in the procedure of the Munsif in giving the direction in the *writ*, the petitioner had no right of private defence under Section 99, I. P. C., against the peon, who was

1. *Yusuf Hussain*, 40 All. 284.
2. *Q. Emp.* v. *Narsang Pathabhai*, 14 Bom. 441.

a public servant acting under colour of his office and in good faith[1].

The right of private defence against the act of a person of unsound mind etc—Such a right exists under Section 98, I.P.C. Z, under the influence of madness, attempts to kill A ; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

Arrest of a wrong person : right of private defence.—A District Magistrate issued a warrant for the arrest and production of a witness for the purpose of giving evidence at an investigation held by the police. In attempting to execute such warrant the Police-officer arrested a wrong person and was assaulted in the attempt. *Held*—no offence was committed by the person arrested[2].

No one can take the law into his own hand.—The petitioner went with three ploughs on a plot of land to which the complainant had the right of possession, and of which he was in possession till such entry, and began to plough the land, to uproot some castor plants and throw them away. While they were thus in actual but temporary occupation, the complainant and his party went on the land and tried to unyoke the cattle, whereupon a riot took place. The petitioners were convicted by the trial Court. Their lordships, while upholding the conviction *observed*

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1. *Freolal Mukherjee* v. *K. Emp.*, 18 C. W. N. 548.
2. *Q. Emp.* v. *Jogendranath Mookerjee*, 24 Cal. 320=1 C.W.N. 154.

that the petitioners were undoubtedly members of an unlawful assembly and that the complainant did not use force of an aggressive kind. The complainant might have recourse to the proper authorities for the prevention of any wrongful act, and redress in other ways, but that was no justification of the conduct of the petitioners ; for, even if they had a right to the land, they had no right to take the law into their own hands[1]. The plea of defence of property or person is not available when either party invites the other to the contest[2].

Exceeding the right of private defence.—A weak semi-starved old woman was detected in the act of stealing : she was mercilessly beaten : the ulna of the fore-arm was broken : the phalanx of the left finger was also broken : there were contusions and abrasions all over the body and the marks of two severe blows on the head : death ensued within a few hours, and was without the least doubt, caused by such beating, *held*—injuries inflicted were not simply an excess, and beyond what the law would have allowed for the purpose of such defence : they were altogether beyond the pale of law. The accused was convicted under Section 302, I.P.C., and was sentenced to transportation for life[3].

Justifiable injury.—For injuring another in self-

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1. *Jairam Mahton* v. *Emp.*, 35 Cal. 103 = 7 Cr. L. J. 123.
2. *Bhavio Sing* v. *E.*, A.I.R. 1935 Nag. 141 = 36 Cr. L. J. 861.
3. *Q. Emp.* v. *Gokool Bowree*, 5 W.R. 30. *Similar case of exceeding the right*—*Bechhu Lal* v. *E.* 1935 O. W. N. 934 (Oudh case).

defence there must be two things : (1) there must be no more harm inflicted than is necessary for the purpose of defence and (2) there must be a reasonable apprehension of danger to the body from the attempt or threat on the part of the aggressor to commit some offence.

Where the right of private defence of the body extends to causing death.—This is the subject-matter of Section 100, I.P.C. The section is reproduced below :—
"The right of private defence of the body extends under the restrictions mentioned in the last preceeding Section (99) to the voluntary causing death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, *namely* :—

First—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

Secondly—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

Thirdly—An assault with the intention of committing rape ;

Fourthly—An assault with the intention of gratifying unnatural lust ;

Fifthly—An assault with the intention of kidnapping or abducting ;

Sixthly—An assault with the intention of wrongfully confining a person, under circumstances which

may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release[1].

In other cases the right extends to causing any other harm but not death.

Private defence of property.—It extends (subject to the restrictions contained in Sec. 99) to the voluntary causing death in cases of (1) robbery, (2) house-breaking by night, (3) mischief by fire on human dwelling or place for custody of property, (4) theft or house-trespass under circumstances as may reasonably cause the apprehension that death or grave assault will be the consequence if such right of private defence is not exercised[2]. In other cases the right extends to causing any harm other than death.

Commencement and continuance of the right.—The right commences when the apprehension of danger commences and ends when the apprehension ends. In case of apprehension of deadly assault, if the defender is so situated that he cannot effectually exercise his right without risk of harm to an innocent person,—the right extends to the running of the risk.

Private defence of person and property : when one exceeds the right and when not.—The deceased and three others who formed his party attacked with *lathis*, the accused and his party of equal number ; as a result of the quarrel one of the party of the deceased

1. Section 100, I.P.C.
2. Section 103, I.P.C.

struck a blow on the accused which felled him to the ground. The accused rose up and inflicted a blow on the head of the deceased which fractured his skull causing death within a short time. *Held* that under the circumstances of the case the accused did not exceed his right of private defence, and that a man in the predicament of the accused could not be expected to judge too nicely[1].

Under Section 103, I. P. C., the right of private defence of property to the extent of causing death arises not only when the house is broken into but when an attempt is made to break into the house. It is not the intention of law that the right to defend property is available only when the thief has already effected entry. Property may be protected by attacking the thief inside the house as much as by preventing his entry into it[2].

Where the aggressors were armed with deadly weapons and actually committed house-trespass and the accused reasonably apprehended that death or grievous hurt to himself and his men would be the consequence, and wounded the aggressors—*held* the right of private defence was not exceeded[3].

A police constable, at midnight, entered upon the premises of a person who was regarded by the police as a suspicious character and knocked at his door to ascertain if he was there ; whereupon, the man came

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1. *Bhut Nath Dome* v. *K. Emp.*, 13 C. W. N. 1180.
2. *K. Emp.* v. *Ali Mea*, 43 C. L. J. 532.
3. *Q. Emp.* v. *Ramlal Sina*, 22 W. R. 51.

out and abused and pushed the constable and lifted a stick as if he were about to hit the constable with it. A complaint was preferred against the man under Section 353, I. P. C., for using criminal force to deter a public servant in the execution of his duty. It was *held* that in the circumstances of the case no offence had been committed; the constable was not engaged in the execution of his duty as a public servant and was technically guilty of house-trespass, and his action was calculated to cause annoyance to the inmates of the house and was insulting to the accused and that he was in consequence justified in causing the slight harm which he had inflicted on the constable. The constable could not be regarded under Section 99, I. P. C., as acting in good faith—under colour of his office, as his actions were not authorized by any police circular or order[1].

Accused persons, while in the peaceful possession of their property, were attacked by the opposite party. Men of opposite party began to reap crops grown by the accused. The accused party armed themselves with sticks and opposed the cutting of the crops, and in the riot which took place, two men of the aggressing party were wounded. *Held*, the accused did not exceed the right of private defence of property[2].

A commits no offence if in exercising the right of private defence of his property against B, whom he

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1. *Dorasamy Pillai* v. *Emp.*, 27 Mad. 52=(1 Weir 529 and 346= 13 M. L. J. 285).
2. *Q. Emp.* v *Gurucharan Chung and others*, 14 W. R. 69.

finds near a hole on A's house, strikes him with a stick in the dark at random, whereby B is killed[1]. When the accused believing that the deceased had been stealing paddy from his field gave him *lathi* blows on the vital part of the body causing immediate death—*held* the right was exceeded and the accused was liable to be convicted under Sec. 304, I. P. C.[2].

CHAPTER V.

ABETMENT, CONSPIRACY AND OFFENCES AGAINST STATE.

Abetment.—A person abets the doing of a thing who instigates any person to do that thing or intentionally aids by an act or illegal omission of doing that thing and does other acts mentioned in Section 107, I. P. C. An abettor has been defined in Section 108 I. P. C. Other sections of Chapter V of the I. P. C., enumerate various kinds of abetments. To constitute the offence of abetment it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence be caused. Where A instigates B to murder C, but B refuses to do so, A is guilty of abetting B to commit murder. The

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1. *Q. Emp. v. Pelkoo Nushyo and others*, 2 W. R. 43
2. *[illegible] v. E.*, 1935 O. W. N. 934.

offence of abetment is complete notwithstanding that the person abetted involuntarily fails in doing the act abetted or is interrupted before the act is complete. The offence of abetment by instigation depends upon the intention of the person abetted[1]. Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence (for which he would be punishable in consequence of the abetment) is committed, he shall be deemed to have committed such act or offence[2]. Where A gave a *dao* to B, who had given out his intention to coerce C and B inflicted grievous hurt on C with the *dao*,—*held*, A was guilty of abetment[3].

Sympathy—if abetment.—The offence of abetment is a substantive offence. Mere show of sympathy is no abetment. Persons of influence being aware of the objects of the members of an unlawful assembly deliberately absented themselves from the locality where such an assembly was formed and showed sympathy. Princep J., *held* that the conduct of those persons did not amount to "instigation" or "abetment" of an offence[4].

In order to convict a person of abetting the commission of a crime it is necessary not only to prove that he has taken part in some steps which may be

1. *D. P. Minwallah* v. *E.*, A.I.R. Sind 78 = 36 Cr. L. J. 88
2. Section 114, I.P.C.
3. *Q. Emp.* v. *Eshan Meah and Bedoo Meah*, 12 W.R. 52.
4. *Etim Ali Majumder* v. *Emp.*, 4 C.W.N. 500.

innocent but that he is connected with other steps of the transaction which are criminal[1].

If the principal offence fail.—An offence of abetment may fall through if the principal offence is not substantiated[2]. But it cannot be said as a general rule that an abettor must be acquitted if the principal is acquitted[3].

Conspiracy.—Under the Indian Penal Code conspiracy, except in the cases provided for in the Code, is a mere species of abetment when an act or illegal omission takes place in pursuance of that conspiracy, and amounts to a distinct offence for each distinct offence abetted by conspiracy[4].

Different consequences of abetment.—When one act is abetted and a different act is done, the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it, provided, the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment[5].

The test of guilt in a charge of abetment must

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1. *Q. Emp.* v. *Nimchand Mookerjee*, 20 W R. 41.
2. *Raja Khan* v. *K. Emp*., 32 C L.J. 478=22 Cr. L. J. 448.
3. *Uma Dasi Dasi* v. *K Emp.*, 28 C.W.N. 1046=52 Cal. 112=40 C. L. J. 813=26 Cr. L. J. 11.
4. *K. Emp.* v. *Tirumal Reddi*, 24 Mad. 523=11 M.L.J. 241=2 Weir 340.
5. Section 111, I.P.C.

always be whether having regard to the immediate object of the instigation or conspiracy, the act done by the principal is one which, according to ordinary experience and common sense, the abettor must have foreseen as probable[1].

Criminal conspiracy.—This subject has been dealt with in Chapter V-A of the Indian Penal Code. Criminal conspiracy has been defined in Section 120-A., I. P. C. Except in respect of the offences particularised in Section 120-A, conspiracy *per se* is not an offence under the Indian Penal Code[2].

Definition : punishment : gist of the offence.—When two or more persons agree to do, or cause to be done—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation :—It is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to that object[3].

Section 120-B prescribes punishment for criminal conspiracy. Whoever is a party to a criminal

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1. *Q. Emp.* v. *Mathur Das and others*, 6 All 491=4 A. W. N. (1884) 251=8 Ind. Jur. 119.
2. Statement of object and reasons.
3. Section 120-A, I.P.C.

conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both[1]. The gist of the offence under Section 120-B, I. P. C., is an agreement between the accused persons: when one of the two accused under trial is acquitted of the charge under Sections 120-B/302, I. P. C., the other cannot be convicted of that charge[2]. Criminal conspiracy consists simply in the agreement or confederacy to do a criminal act—no matter whether it is done or not[3].

Criminal conspiracy: proof.—To establish a charge of criminal conspiracy, the prosecution must prove an agreement between two or more persons to do or cause to be done, some illegal act, or some act which is not illegal by illegal means. Any act done by any of the parties to the agreement in pursuance of it need not be proved[4].

1. Section 120-B, I. P. C.
2. *K. Emp.* v. *Osman Sardar*, 39 C.L.J. 264.
3. *Amrita Lal Hazra* v. *K. Emp.*, 19 C.W.N. 676=42 Cal. 957=29 I. C. 513.
4. *Bacha Babu* v. *E.*, A.I.R. 1935 All. 162=36 Cr. L. J. 684.

Sanction.—Under Section 196-A, Cr. P. C., no Court can take cognizance of a case under Section 120-B, I. P. C., without the sanction of the Local Government.

Section 196-A of the Criminal Procedure Code only renders sanction necessary when the prosecution is for criminal conspiracy punishable under Section 120-B of the Indian Penal Code. Prosecution for abetment by way of conspiracy punishable under Section 109 of the said Code requires no sanction[1].

Offences against the State and offences relating to Army, Navy and Air Force.—These matters have been dealt with in Chapters VI and VII of the I. P. C., —Sections 121 to 140.

Offences against the State are: Waging or attempting to wage war or abetting the waging of war, conspiracy to commit the aforesaid offences, collecting arms with the intention of waging war, sedition and similar other offences. The most common offence under Chapter VI,—I.P.C., is sedition.

Sedition.—This has been defined in Section 124-A. As the said section is important, it is reproduced below:

"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards His Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine

1. *Abdul Salim* v. *K. Emp.*, 35 C. L. J. 279.

may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1 :—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2 :—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3 :—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section[1].

Gist of the offence : Intention.—The gist of the offence under Section 124-A, Indian Penal Code, lies in the *intention* of the writer and the *intention* is to be gathered from a fair and generous reading of the article in respect of which the charge is laid and not from isolated or stray passages here and there. In gathering the *intention*, allowance must be made for a certain amount of latitude to writers in the public press.

Section 124-A, Indian Penal Code is to be so construed as do not stifle altogether legitimate criticism[2].

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1. Section 124-A, I. P. C.

2. *Gopal Lal Sanyal v. K. Emp.*, Vol. 46 C. L. J. 156=105 I. C. 268=28 Cr. L. J. 900=A.I.R. 1927 Cal. 751.

Disaffection.—Strachey J., in the case of *Q. Emp.* v. *Bal Gangadhar Tilak*[1] (Editor of 'Kesori' who was charged under Section 124-A, I.P.C.), in his charge to the Jury said, "I agree with Sir Comer Pethram in the 'Bangabasi' case that disaffection means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will to the Government. 'Disloyalty' is perhaps the best general term, comprehending every possible form of bad feeling to the Government. That is what the law means by the disaffection which a man must not excite or attempt to excite; he must not make or try to make others feel enmity of any kind to the Government."

Construction of document : evidence of intention.—When the meaning of a document has been truly ascertained that document itself is evidence of the *intention* of the writer. *Intention* is a psychological fact and can be proved under Section 14 of the Evidence Act, when the existence of *intention* is in issue or relevant, provided that the collateral fact is not too remote.

In judging the question of *intention* the publisher must be deemed to *intend* that which is the natural result of the words used. In the Privy Council case of *Annie Bessant* v. *Advocate General*, it was *held* : "In judging the question of intention the publisher must be deemed to intend that which is the natural result of the words, having regard, amongst other

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1. 22 Bom. 112 at page 134.

things, to the character and description of that part of the public who are expected to read the articles[1]."

Seditious speech: relevancy of other speeches.—It was *held* by Sir Arnold White, C. J., and Miller J., in the case of *V. O. Chidambaram Pillai*[2] : that : "Where certain speeches form the subject matter of a charge for sedition and when such speeches form part of a series of speeches or lectures on the topic, delivered within a short period of time, any of such speeches or lectures will be admissible, under Section 14 of the Evidence Act, as evidence to prove the intention of the speaker in respect of the speeches which form the subject of the charge."

When no sedition.—A speech charging the Government with discriminating against Class organisations and recommending Bolshevik form of Government as preferable to *per se* Capitalist form does not amount to sedition[3].

Sanction.—Government sanction is necessary for prosecution of the offender for sedition and other offences against the State[4]. The order according sanction need not contain the different sections of the I. P. C., under which the offence comes.

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1. *Annie Besant* v. *Advocate General of the Government of Madras*, 23 C. W. N. 986, 21 Bom. L. R. ; 867 P. C.
2. 32 Mad. 3=9 Cr. L. J. 130.
3. *Kali Krisna Sarker* v. *E*, 39 C. W. N. 1245=A. I. R. 1935 Cal. 63[illegible].
4. Vide Section 196 Cr. P. C.

CHAPTER VI.

CONTENTS OF THE DIFFERENT SECTIONS OF I. P. C.

This Chapter is virtually the table of contents of the Indian Penal Code : it is calculated to help facility of reference to sections of the Code by the description of the offence. The next two Chapters are devoted to treatment of the law bearing on some very common offences which have been numbered serially and treated severally. Bold type figures in the left hand column of this Chapter refer to the serial number given by the author to these offences in the next Chapter.

Brief Contents *Sections*

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CHAPTER VII

COMMON OFFENCES.

Common offences under the Indian Penal Code.—It is not within the scope of this book to refer to all the sections of the I. P. C. But the offences, under the Indian Penal Code, which frequently come up before our criminal Courts will be mentioned in this chapter for ready reference.

After mentioning the offences and the sections I shall deal with those sections separately, giving concise but useful notes. This, it is hoped, will be appreciated by the junior practitioners for whom the book is primarily meant.

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N. B.—For notes on the above Sections see next Chapter.

CHAPTER VIII.

NOTES ON THE IMPORTANT SECTIONS OF I. P. C. AS MENTIONED IN THE LAST CHAPTER.

Nos. 1 to 5. (Sections 108, 114, 120-B, 124-A, 121-130, I. P. C.—Abettor, Criminal conspiracy, etc.)

Copious notes on the above sections have been given in Chapter V.

No. 6. (Section 143 I. P. C.—Punishment for unlawful assembly).

NOTES.

Common object :—An assembly of five or more persons is designated an unlawful assembly if the

common object of the persons composing that assembly is one or more of the five objects mentioned in Section 141, I. P. C. In other words, to constitute an unlawful assembly the number of the persons of the assembly should be at least five and their common object—one of the five common objects mentioned in the said section. It is for the prosecution to prove the common object. If the *common object* as specified in Section 141 is not proved there can be no conviction under Section 143, I. P. C[1]. It must be shown that the accused persons were actuated by a common object, and that the acts done by them were of such a nature as would come under Section 141[2]. Section 141 does not make an assembly of persons unlawful, if the object with which they assemble is a perfectly legal one[3].

An assembly does not become unlawful by repelling an attack made on it by persons who have no right to obstruct it, nor by exceeding the lawful use of their right of private defence. A member of the assembly may be liable only for his individual acts done in excess of such right[4]. Persons, who do not disperse on being legally ordered to do so, are guilty of being members of an unlawful assembly[5]. (See No. 8—*infra*).

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1. *Koylash Chandra Dass* v. *Baboos Kalee Mohan Dass* and *Nullit Chandra Sein*, 20 W. R. 78.
2. *Q. Emp.* v. *Dinobandhu Rai*, 9 W. R. 19.
3. *Umacharan Singh* v. *Emp.*, 29 Cal. 244.
4. *Kunja Bhuiya* v. *Emp.*, 39 Cal. 896 = 16 C.W.N. 1053 = 13 C.L.J. 481 = 15 I. C. 481.
5. *Q. Emp.* v. *Tirakadu and others*, 14 Mad. 126 = 1 Weir 59.

No. 7. (Section 144 I. P. C.—Joining unlawful assembly armed with deadly weapons).

NOTES.

This section provides for graver punishment if the members of the unlawful assembly are armed with deadly weapons.

When one person instigates another to join an unlawful assembly armed with a deadly weapon and afterwards joins the unlawful assembly himself, he may be punished under Section 144, I. P. C., read with Section 114, I. P. C, even though he is not himself armed with a deadly weapon[1].

No. 8. (Section 145, I. P. C.—Joining or continuing in an unlawful assembly commanded to disperse).

NOTES.

It must be shown that the accused joined the unlawful assembly knowing that it had been commanded to disperse[2]. Congress processionists were ordered to take a different route. They refused to obey the order and did not disperse. They were convicted under this section[3].

No. 9. (Section 147—Rioting).

NOTES.

Common object : *Charge* : *Section, etc.*—Whoever is guilty of rioting is liable to be punished under Section 147, I. P. C. Five or more persons must have the same

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1. *Srihari Some and Babar Ali* v. *Lal Khan*, 5 C. W. N. 250.
2. *Keshav Gobind*, 23 Bom. L. R. 350; 60 I. C. 1008.
3. A. I. R. 1933 Cal. 361 = 34 Cr. L. J. 814 = 144 I. C. 691.

common object. If there were only five persons in the assembly—three of whom had one common object and the remaining two—a different one, there can be no conviction under Section 147[1]. The common object should be specifically stated in the charge so that the accused may have an opportunity of meeting the case[2]. To sustain a conviction of rioting, there should be a clear finding as to the common object of the unlawful assembly.

Separate sentences for the offences of rioting and causing grievous hurt cannot be legally imposed upon a member of an unlawful assembly, where the offence of rioting was not itself complete until grievous hurt was actually inflicted[3]. Where injuries are inflicted in the course of defending a sudden attack by men armed with sticks, the assembly does not necessarily become unlawful[4]. Section 147 does not apply where a person in lawful possession of property uses force in order to maintain his possession and prevent a wrongful trespass[5]. Charge for an offence of rioting with one common object will vitiate a conviction for an offence with another common

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1. *Aminulla* v. *Emp.,* 26 C. W. N. 536.
2. *Allah Dad* v. *Emp.,* 25 Cr. L. J. 43=75 I.C. 731=A. I. R. 1924 Lah. 667. (2)
3. *Bishna* v. *Emp.,* 24 Cr. L. J. 629=73 I. C. 517=A. I. R. 1922 Lah. 405.
4. *Ramaswami* v. *Emp.,* (1925) M. W. N. 666=A. I. R. 1925 Mad. 1213.
5. *Parmeshwar Din* v. *Emp.,* 11 O. L. J. 40=83 I. C. 523= A. I. R. 1923 Oudh. 167.

object[1]. In a trial of the accused for an offence under Section 147, I. P. C., the common object as stated in the charge was to "enforce a right or supposed right". There was no contest in either of the lower Courts as to the common object and those Courts did not discuss the question of the common object and come to any express finding on the point. Both the Courts impliedly found that the common object was as stated in the charge and the accused were convicted. As the accused persons were in no way misled or prejudiced, their conviction was upheld by the High Court[2].

No. 10. (Section 148, I. P. C.—Rioting armed with a deadly weapon).

NOTES.

Deadly weapon.—Rioting armed with stout made bamboos comes under Section 148, I. P. C[3]. Sir John Edge, Kt., C. J., and Tyrrel J., *held* in the case of *Q. Emp. v. Nathu and others*[4] that the question whether or not a *lathi* is a "deadly weapon" within the meaning of Section 148 of the Indian Penal Code is a question of fact, to be determined on the special circumstances of each case.

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1. *Shafayet Khan v. Emp.*, 25 Cr. L. J. 1018=81 I. C. 794= A. I. R. 1925 Pat. 152.
2. *Dasarath Mahapatra v. Raghu Sahu*, 12 C. W. N. 944= 8 C. L. J. 69=8 Cr. L. J. 129=36 Cal. 158=1 I. C. 794.
3. *Krishna Chetty*, 1 Weir 70.
4. 15 All. 19=12 A. W. N. (1892) 158.

No. 11. (Section 149 I. P. C.—Liability of individual accused in a rioting case).

NOTES.

Liability of individual accused and the charge.—The nature and object of the assembly must determine what act done and what offence committed by any one of its members become, under this section, the act and offence of the whole body[1]. A member of an unlawful assembly, some members of which have caused grievous hurt, cannot be lawfully punished for the offence of rioting as well as for the offence of causing grievous hurt. There must be a separate charge under some sections of the Indian Penal Code read with Section 149[2].

No. 12. (Section 153-A I.P.C.—Promoting enmity between classes).

NOTES.

If the words used naturally, clearly, indubitably have the tendency to incite one community against another, the intention to do it should be inferred[3].

The essence of the offence under Section 153-A, I. P. C., is *malicious intention.* Honesty of purpose may safely be inferred from the absence of malicious intention. An editor is not criminally liable, where he honestly publishes a matter of public interest[4].

Interpretation of an alleged seditious drama.—The intention of the writer has to be judged not only from

1. *Morgan* and *Macpherson.*
2. *Emp.* v. *Ram Partab,* 6 All. 121 = 3 A. W. N. (1883) 241.
3. *Satyaranjan Bakshi* v. *Emp.,* A. I. R. 1929 Cal. 309.
4. *Hemendraprasad Ghose* v. *K. Emp.,* 31 C. W. N. 168 = 28 Cr. L. J. 205 = 45 C. L. J. 432 = 99 I. C. 941 = A. I. R. 1927 Cal. 215.

the words used in certain parts of the drama, the publication of which forms the subject-matter of a charge under Section 153-A of the Indian Penal Code, but from the drama taken as a whole. If the writer is quite honest in the view which he takes, though it may be a wrong one, he cannot be brought within the scope of Section 153-A[1]. If an article in a newspaper is ambiguous or doubtful and the Crown requires to supplement it by the evidence of other articles from the same newspaper the accused has the right to give evidence in rebuttal[2].

Sanction.—Government sanction is necessary for prosecution under this section[3].

No. 13. (Section 161 I.P.C.—Public servant taking illegal gratification).

NOTES.

Gist.—The gist of the offence is that a public servant has taken gratifications other than the legal remuneration in respect of an official act.

Proof.—For a conviction under Section 161, I.P.C., the illegal gratification must be proved to have been received with one of the intents mentioned in the section[4]. Bribe given to and accepted by an officer who cannot show the favour constitutes no offence, under this section, on the part of the person who offers it[5].

1. *Iswariprosad Sarma* v. *K. Emp.*, 46 C. L. J. 154.
2. *In the matter of Amrita Bazar Patrika Press Limited, Calcutta*, 30 C. L. J. 289.
3. Vide Sec. 196 Cr. P. C.
4. *Ajodhiaprasad* v. *Emp.*, 89 I. C. 455=26 Cr. L. J. 1367. (Judgment of Moti Sagar J.)
5. *Quazi R[illegible]ulla* v. *E.*, 36 Cr. L. J. 626 (1935)

It is not enough for a conviction under Section 161, I. P. C., to show that the accused merely took a certain sum of money but it must be proved that he took the amount as a motive or reward for any of the purposes mentioned in the section[1]. The taking of a gratification by a *Serishtadar* to influence the principal *Sadar Amin* in his decision was *held* sufficient for a legal conviction under this section, no matter whether the *Serishtadar* did or did not influence or try to influence the principal *Sadar Amin*[2]. To ask for a bribe is an attempt to obtain one[3].

Evidence of accomplice: *Corroboration*:—Where the complainant did not willingly offer the bribe, but the accused, a Police-officer demanded it before taking up the charge, brought by the complainant and made use of his official position to enforce his demand, it was *held* by Brett and Stephens, JJ., that the circumstances were such as would justify a conviction on the testimony of the accomplices (the person making the complaint and his men) with a much lighter degree of corroboration than would otherwise be necessary[4]. Rampini and Pratt, JJ., *held* in the case of *Q. E.* v. *Deodhar Sing*, that mere presence of a person on the occasion of the giving of the bribe, and his omission to promptly inform the authorities, do not make him an accomplice, unless it can be shown that he

1. *Upendranath Chowdhury* v. *Emp.*, 21 C. W. N. 552.
2. *Q. Emp.* v. *Kaleechurn Sherishtadar*, 3 W. R. 10.
3. *Q. Emp.* v. *Baldeo Sahai*, 2 All. 253.
4. *Deonandanprosad* v. *Emp.*, 33 Cal. 649=10 C. W. N. 669= 3 Cr. L. J. 452.

somehow co-operated in the payment of the bribe, or was instrumental in the negotiations for the payment[1]. The question depends on the circumstances of each case[2].

No. 14. (Section 162 I.P.C.—Taking gratification to influence a public servant).

NOTES.

A person who accepts for himself or for some other person a gratification for inducing, by corrupt or illegal means, a public servant to do a certain official act, is punishable not under Section 161, but under Section 162 of the Penal Code[3].

No. 15. (Section 171-D, I.P.C.—Personation at elections).

NOTES.

The offence has been defined in Section 171-D, I. P. C. This section applies to double voting also. A person who alleges himself to be a voter, and obtains a ballot paper or votes in the name of any other person commits an offence defined in Section 171-D and is punishable under Section 171-F, I.P.C.

No. 16. (Section 171-E, I.P.C.—Punishment for bribery, etc., at election).

NOTES.

Section 171-B, I. P. C., refers to bribery at an election. This section occurs in the new Chapter IX-A, which deals with offences relating to elections.

1. 27 Cal. 144, Judgment of Rampini and Pratt, JJ.
2. *Emp.* v. *Malhar Martand Kulkarni*, 26 Bom. 193=3 Bom. L. R. 694.
3. *Q. Emp.* vs. *Olhoy Charan Chakravarty*, 3 W. R. 19.

The said new Chapter has been incorporated in the Code by Act XXXIX of 1920. The offences relating to elections have been described in Sections 171-A to 171-I, I. P. C.

No. 17. (Section 172 I.P.C.—Absconding to avoid service of summons).

NOTES.

This section contemplates absconding to avoid service of summons or orders of proceedings. It has no application to a case of warrant[1]. The Calcutta High Court, however, has taken a different view[2]. The prosecution must show that a summons, notice or order was issued, and that the accused knew or had reason to believe that it had been issued. Section 172 applies to a case of a witness also.

No. 18. (Section 175 I.P.C.—Omission to produce documents).

NOTES.

This section contemplates omission to produce a document legally called for by a public servant. It must be shown that the public servant had authority to call for the document. An accused cannot be convicted for omission to produce a document called for[3]. A witness comes under this section[4].

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1. *Sheojangal Prosad*, 30 All. 666.
2. In the matter of *Hossen Manjee*, W. R 70. (*Warrant against witness*).
3. *Iswar Chandra Ghoshal* v. *Emp.*, 12 C. W. N. 1016.
4. In the matter of *Prem Chand*, 12 Bom. 63.

No. 19. (Section 177 I.P.C.—Furnishing false information).

NOTES.

False information.—It must be shown that the accused knew that the information supplied by him was false or had reasons to believe it to be false. To make a false entry in a return kept by a Government servant and sent to his official superior in pursuance to a departmental order is not an offence within the meaning of Section 177 of the Indian Penal Code[1]. A Police-officer who intentionally enters in the diary, a false report, commits the offence punishable under Section 177[2]. A person making a false statement, to create evidence for his success in a case, cannot be held guilty of an offence under Section 177, I. P. C[3]. Where the accused is not legally bound to supply information—he does not come under this section[4].

Income tax return.—A person, who has not been served with a notice under Sec. 22(2) of the Indian Income Tax Act requiring him to submit a return of his income, cannot be prosecuted for having submitted a false return[5].

No. 20. (Section 178 I.P.C.—Refusing to take oath.)

NOTES.

A witness, unless he gets his legal expenses, is

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1. *Virasami Mudali* v. *Q. Emp.*, 4 Mad. 144 = 1 Weir 108.
2. *Q. Emp.* v. *Muhammad Ismail Khan*, 20 All. 151 = 17 A. W. N. (1897) 227.
3. *Mohamed Wasil* v. *Emp.*, 13 C. W. N. 191.
4. *Q. Emp.* v. *Appayya*, 14 Mad. 484 = 1 M. L. J. 741 = I Weir 109.
5. *Hari Chand* v. *Crown*, 15. Lah. 832.

not bound to give evidence[1]. This section does not apply to the case of an accused.

No. 21. (Section 179 I. P. C.—Refusing to answer questions).

NOTES.

A false answer given or refusal to answer questions put to a witness under Section 161 Cr. P. C., by a Police-officer does not come under this section[2].

No. 22. (Section 180 I. P. C.—Refusing to sign a statement).

NOTES.

A witness is bound to sign a deposition after it is read over to him and he has admitted it to be correct. Refusal to do so will bring him under Section 180, I. P. C[3]. Refusal by an accused to sign a statement under Section 364, Cr. P. C, also comes under this section as Section 364 Cr. P. C., makes it obligatory on an accused to sign his statement[4].

No. 23. (Section 181 I. P. C.—Knowingly stating to a public servant, on oath, as true that which is false).

NOTES.

Oath.—Trial.—The public servant must be competent to administer oath. A Sub-Register may administer oath in some cases[5]. According to the Calcutta High

1. *Nga Pyo*, 1907, U. B. L R. (P. C.) 9=7 Cr. L. J. 208
2. *Q. Emp.* v. *Sankaralinga Konc*, 23 Mad 544=1 Weir 112. Read also *Bepin Chandra Pal* v. *Emp.*, 7 Cr. L. J. 63.
3. *Mobali Ram*, 1 A. W. N. 43.
4. *Omar Khan*, 39 All. 399.=15 A. L. J. 291.
5. *Q. Emp.* v. *Juggut Chandra Dutt*, 6 W. R 81.

Court, where a false statement is made in any stage of a judicial proceeding before a Magistrate, he ought not to convict the accused under Section 181 of the Indian Penal Code, but should commit the accused to the Court of Session for taking his trial for committing an offence under Section 193, I. P. C[1] A contrary view has been taken by the Madras High Court[2].

No. 24. (Section 182 I. P. C.—False information with intent to cause a public servant to use his lawful power to the injury of another person).

NOTES.

Essence of the offence.—It is not permissible for a Magistrate to sanction the prosecution of a person under Sections 182 and 211, I. P. C., where he has not examined him on oath[3]. The offence under Section 182 is complete when false information is given to a public servant by a person who believes it to be false, and who intends thereby to cause such public servant to institute criminal proceedings against a third person. The offence is complete although the public servant may not take steps towards the institution of such criminal proceedings[4]. Where a person, in whose house a theft took place, informed the police

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1. *Q. Emp.* v. *Nussuroodeen Shazwal*, 11 W. R. 24.
2. *Andy Chetty*, 2 M. H. C. 438.
3. *Bhagwan Das* v. *Emp.*, 1935 A. W. R. 796=A. I. R. 1935 All. 745=155 I. C. 1070=1935 A. L. J. 1067=36 Cr. L. J. 860=1935 Cr. C. 888.
4. *Q. Emp.* v. *Raghu Tiwari*, 15 All. 336=13 A. W. N. (1893) 111.

that he suspected two persons whom he named as the perpetrators of the crime: *held* that this did not amount to giving false information within the meaning of Section 182 I. P. C[1]. To constitute an offence under Section 182, it must be shown that the person giving the information knew or believed it to be false, or that the circumstances under which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false[2]. In other words, to constitute an offence under Section 182 I. P. C., the information given must be an information which the informer knew or believed to be false, and it must be proved that he gave it with such knowledge[3]. No complaint should be made under Section 182, I. P. C., till the matter out of which the charge arises has been finally decided[4]. An offence under this section is committed by a person giving false information to a village Magistrate charging another with having committed an offence[5]. A person who lodges an information with the police is entitled to have his case judicially determined before he is called upon to answer a charge of giving false information under Section 182, I. P. C[6].

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1. *Ananga Mohan Dutta* v. *K. Emp.*, 22 C. W. N. 478.
2. *Rayan Kutti* v. *Emp.*, 26 Mad. 640.
3. In re *Moulvy Abdul Luteef*, 9 W. R. 31.
4. *Gati Mondal*, (1905) 4 C. L. J. 88.
5. *Jonnallagadda Venkatraynou*, 28 Mad. 565, =3 Cr. L. J. 108.
6. *Munshi Isser* v. *K. Emp.*, 14 C. W. N. 765. *Vide Contra* *Q. E.* v. *Raghu Tiwari*, 15 All 336 (*Supra*).

No. 25. (Section 183 I. P. C.—Resistance to taking property by lawful authority of a public servant).

NOTES.

Resistance : Refusal :—It must be shown that there was actual resistance and that by lawful authority any public servant was going to take any property of the accused. Refusal may not be resistance.

Accused resisted to the attachment and taking of goods not belonging to the judgment-debtor, in execution of a decree against the assets of the deceased debtor and the accused was convicted under Section 182. Their lordships Shepherd and Subramania Ayyar JJ., *observed* that to hold that a judgment-debtor might with impunity resist the seizure of goods found in his house, on the ground that they belonged to somebody else, would reduce Section 183 to a dead letter, as honesty and good faith on the part of the attaching officer has to be presumed[1].

Cases of no offence : expired, defective warrant, etc.—A person was convicted under Section 183 for offering resistance to the attachment of his property by a public servant. The alleged offence was committed on the 4th of February, 1883, but the warrant under which the public servant acted was returnable before that day ; *held*, that the accused committed no offence[2].

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1. *Q. Emp.* v. *Tiructhittambala Pathan*, 21 Mad. 78=1 Weir 123.
2. *Ananda Lall Bera* v. *Empress on the prosecution of Azim Peon*, 10 Cal. 18=13 C. L. R. 209.

Where a village *Chaukidar*, without the preparation and publication of a list of defaulters and without any written authority as required by the Sections 26 and 27 of the Village Chaukidari Act (Bengal Act VI of 1870), attached some property for levying the amount of arrears, *held* that resistance to such an attachment was not an offence under Section 183 of the Indian Penal Code[1].

It is the intention of law that when a public servant attaches property under a warrant in execution of a decree he must have the warrant with him, otherwise the attachment of the property will not be lawful[2]. A mere oral statement by a person, claiming to be the owner of certain articles attached, by a *bailliff* in execution of a decree, to the effect that he would not allow the *bailliff* to take away the articles unless he entered them as his property, does not amount to an effence under Section 183 of the Indian Penal Code[3].

No 26. (Section 186 I. P. C.—Obstructing public servant in the discharge of public functions.)

NOTES.

Cases of offence and no offence.—Banerjee and Sale JJ., *held* in the case of *Lilla Singh* v. *Q. Emp.*, that the public functions contemplated by Section 186,

1. *Durga Charan Mali* v. *Nobin Chandra Sil*, 25 Cal. 274.
2. *Emp.* v. *Ganeshi Lal*, 27 All. 258=1 Cr. L. J. 896=24 A. W. N. 229=1 A. L. J. 595.
3. *Patel Vandravan Jekisan* v. *Patel Manilal Chunilal*, 15. Bom. 565.

I. P. C., mean legal or legitimate public functions and not any or every public function[1]. A Sub-Inspector was not strictly justified in searching a house without a warrant and was resisted It was shown that the officer was acting without malice, *held* the persons offering resistance, committed an offence under this section[2]. The resistance to the service of a process by a Civil Court peon is punishable under this section[3]. An attachment process was issued to a place beyond the jurisdiction of the Munsiff, the judgment-debtor resisted the peon, *held* there was no offence[4]. On an application for execution of a decree for restitution of conjugal rights, a warrant was issued directing the executing peon to seize the wife and deliver bodily to her husband, failing which to bring her under arrest before the Court. The Peon seized the woman, in execution of the warrant and was resisted and the woman was snatched away; *held* that as the warrant was illegal, no offence was committed under Section 186 of the Penal Code[5].

A public servant went to execute a warrant of arrest which was not signed by the Magistrate as required by Sec. 75 of the Criminal Procedure Code, but only bore his initials. The substance of the warrant was not notified to the person to be arrested as required by Section 80 of the Code; *held* that the

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1. 22 Cal. 286.
2. *Q. E.* v. *Pukot Kotu*, 19 Mad. 349=1 Weir 45 and 631.
3. *The Ameen* v. *Bhagai Duffadar*, 10. W. R. 43.
4. *Sarbeswer Nath* v. *Emp.*, 39 C. L. J. 33.
5. *Gahar Mahamed Sarker* v. *Pitambar Das*, 22. C. W. N. 814.

public servant did not act in the discharge of his functions in a manner authorized by law and that a person obstructing him could not be convicted under Section 186 of the Penal Code[1]. Resistance to the execution of a *Distress* warrant, which does not contain the extended date of return, is no offence under this section[2]. Mere threats, if they be such as actually stand in the way of the public servant and prevent him from carrying out his duty, would amount to obstruction within the meaning of Section 186, I. P. C[3].

No. 27. (Section 188 I.P.C.—Disobedience to order duly promulgated by public servant.)

NOTES.

Proof.—For a conviction under this section the prosecution must prove that the accused had knowledge of the order promulgated. Evidence that a general notification was issued may not be sufficient in every case[4].

Cases of no offence.—The Magistrate issued an order under Section 144 Cr. P. C, directing the petitioner not to make any disturbance and not to ply any ferry boat in a river. The petitioner was found plying his boat but no disturbance was created : *held,* that

1. *Abdul Gafur v. Q. Emp.*, 23 Cal. 896.
2. *Sheikh Nasur* v. *Emp.*, 37 Cal. 122 = 14 C.W.N. 282 = 5 I. C. 409 = 11 Cr. L.J. 128.
3. *Nafar Sardar* v. *Emp.*, 36 C.W.N. 1038.
4. *Ram Das Singh* v. *Emp*, 44 C. L. J. 250 & *Sk. Abul* v. *E.*, 31 C. W. N. 340.

the accused did not commit any offence under this section[1].

A Magistrate issued general order prohibiting persons not to allow their cattle to run at large on the public roads,—the order was disobeyed : *held*—disobedience to such an illegal and vague order was no offence[2].

Civil Court order.—Section 188 of the Indian Penal Code applies to orders made by public functionaries for public purposes and not to an order made in a Civil suit between party and party[3].

Illegal order of Magistrate—disobedience—Owing to the prevalence of Cholera a Magistrate issued an order forbidding the public generally to give caste dinners. The order was disobeyed by the accused. It was *held* that the accused did not commit any offence as the Magistrate's order could not be legally passed under Section 144 Cr. P. C[4].

Order in 145 Cr. P.C. Proceeding.—Disobedience by a party, of an order, passed in a proceeding under Section 145 Cr. P. C., is an offence under this section[5].

An order under Sec. 144 Cr. P. C , requiring a person to do some particular act, being without jurisdiction, the disobedience of such an order cannot be punished as an offence under Sec. 188 I. P. C[6].

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1. *Sujal Biswas* v. *Samiruddin Mondal*, 22 C.W.N. 599.
2. *Q. Emp.* v. *Ameeruddin*, 12 W. R. 36.
3. In the matter of the Petition of *Chandra Kanta De*, 6 Cal. 445 =7. C. L. R. 350=5 Ind. Jur. 412.
4. *Q. Emp.* v. *Lakshmidas Makandas*, 14 Bom. 165.
5. *Goluck Chandra Pal* v. *Kali Charan De*, 13 Cal. 175.
6. *Satish Chandra Mukerjee* v. *Lokendra Das Pal*, 39 C.W.N. 1053 (*Judgment of Lort Williams and Jack JJ.*)

No. 28. (Section 189 I.P.C.—Threat of injury to a public servant.)

NOTES.

"Injury" in Section 189 of the Penal Code implies an illegal harm. The mere threat to bring a legal complaint is no injury[1].

No. 29. (Section 193 I.P.C.—Punishment for false evidence.)

NOTES.

Nature of false evidence.—"Fabricating false evidence" has been defined in Section 192 I. P. C. The evidence fabricated should be material and legally admissible[2] and the accused must contemplate some injury to a person by that evidence. An accused person cannot be charged with either for giving or for fabricating false evidence with the sole object of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged[3].

But in the case of *Supdt. & Remembrancer of Legal Affairs* v. *Tarack Nath Chatterji*, Lort Williams & Jack JJ., *held* that Sec. 193 I. P. C., is as much applicable to an act done by an offender to screen himself from punishment as to an act done by him for the purpose of getting another person into trouble[4].

1. *Sahadad Khan* v. *The Crown*, 6 Lah. 558 ; 27 Punj. L.R. 87 ; 93 I.C. 48 ; 6 Cr.R. 83; 27 Cr. L.J. 400 ; A.I.R., 1926, Lah. 139.
2. In re *Gouri Sankar*, 6 All. 42=3 A.W.N. (1883) 189.
3. *Emp.* v. *Ramkhilawan*, 28 All. 705=4 Cr.L.J. 66=1906 A.W.N. 191.
4. 62 Cal. 666=A.I.R. 1935 Cal. 309.

Cases of offence and no offence.—Misleading the Court by false personation with a view to cause failure of justice comes under Section 193, I. P. C[1]. False statement made in an affidavit filed in support of an application is punishable under this section, but if the affidavit be stamped with non-judicial stamp and is not admissible in evidence—no action can be taken on such an affidavit[2].

An inquiry under Section 476, Criminal Procedure Code, is a judicial proceeding and a witness giving false evidence in the course of such an inquiry is guilty of an offence under Section 193 of the Penal Code[3]. Where a person has made two contradictory statements, one to a Police-officer making an investigation under Chapter XIV of the Code of Criminal Procedure and the other to a Magistrate holding a preliminary inquiry, he cannot be charged and still less convicted on an alternative charge[4].

If such evidence is used.—Section 193 contemplates cases of fabricating false evidence for the purpose of being used in a judicial proceeding. If the evidence is actually used, the offence comes under Section 196, I. P. C.

Giving false deposition in Court. False statement.—In case of a prosecution under Section 193, I.P.C.

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1. *Emp.* v. *Cheda Lal*, 29 All. 351=4 A.L.J. 237=1907 A.W.N. 107=5 Cr. L. J. 285.
2. *Ambica Charan Das* v. *Emp.*, 35 C.W.N. 690=32 Cr.L.J. 674=58 Cal. 1211=A.I.R. 1931 Cal. 344.
3. *Abdullah Khan* v. *Emp.*, 14 C.W.N. 132.
4. *Q. Emp.* v. *Mugapa Bin Ningapa*, 18 Bom. 377 (F.B.)

the statement must be proved to be intentionally false. In a prosecution for giving false evidence, it is necessary to prove the deposition alleged to contain the false statement[1].

Failure to comply with the provisions of Ss. 182 and 183 (Order XVIII, rule 5) of the Civil Procedure Code or Section 360 Cr. P. C., in a judicial proceeding is an informality. There were cases in which it was *held* that if the formalities were not observed—the deposition was not admissible in evidence. This is no longer the law after the Privy Council decision in the case of *Abdul Rahaman*[2].

Separate trial —Where several persons are accused of having given false evidence in the same proceeding, they should be tried separately[3].

No. 29-A. (Section 197 I. P. C.—Issuing or signing false certificate.)

NOTES.

The certificate contemplated by Section 197 is a certificate which is required by law to be given or signed for the purpose of being used in evidence in the course of the administration of justice[4].

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1. *Q. Emp.* v. *Bhakoas Tutum*, 7 W. R. 13.
2. 29 Bom. L. R. 813=54 I. A. 96.
3. *Emp.* v. *Ananta Ram*, 4 All. 293=2 A.W.N. (1882) 37.
4. *Birendra Nath* v. *Umanada Mukherjee*, 42 C. L. J. 557=30 C. W. N. 120=A. I. R. 1926 Cal. 258.

No. 80. (Section 199 I. P. C.—False statement made in declaration which is by law receivable as evidence.)

NOTES.

Affidavit etc.—The making of a false affidavit by an identifier as to the service of summons is punishable under Section 199[1]. Where the accused is charged for having made a false statement in an affidavit, the prosecution has got to prove the falsity of the statement. The accused need not prove that it was true[2]. Where a written statement was verified as required by Order 6, rule 15, C.P.C., but the Court had not ordered proof of the statements made therein by affidavit, the allegation in the written statement may not by itself be the basis of a conviction under Section 199, I. P. C[3].

A declaration, before it can be made the foundation of prosecution under Section 199 of the Indian Penal Code, must be one which is admissible in evidence, and which the Court before which it is filed is bound or authorized by law to receive in evidence[4].

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1. *Karo Goap* v. *Mahanth Monmohan Das*, 6 Pat. 760=106 I. C. 703=29 Cr. L. J. 111=A. I. R. 1928 Pat. 161.
2. *Baddu Khan* v. *Emp.*, 108 I. C. 124: 29 Cr. L. J. 336 ; A. I. R. 1928 All. 182.
3. *Janaki Rai* v. *Emp.*, 25 A.L.J. 327 ; 100 I. C. 707 ; 28 Cr. L. J. 323 (2) ; A. I. R. 1927, 383.
4. *Emp.* v. *Ram Prasad*, 35 All. 58=17 I. C. 401=13 Cr. L. J. 769=10 A. L. J. 462.

No. 31. (Section 201 I. P. C.—Causing disappearance of evidence etc.)

NOTES.

Section 201 of the Indian Penal Code is an attempt to define the position known in England as that of an accessory[1].

Knowledge.—A person cannot be convicted under Section 201, I. P. C., of having caused evidence to disappear if he has no knowledge or belief that an offence has been committed, nor any intention of screening an offender[2].

Prisoner was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held*, he was guilty not of abetment of murder, but of causing the disappearance of the evidence of a crime[3] under Section 201, I. P. C.

No. 32. (Section 202 I. P. C.—Intentional omission to give information of an offence.)

NOTES.

"The two essential points to be proved before a conviction can be had under Section 202, I P. C., are *first*, the substantial fact of an offence having been committed ; and *secondly*, the knowledge or reasonable belief on the part of the accused that such was the case[4]. There can be no intentional omission to give

1. *Samanta Dhupi* v. *Emp*, 23 C. L. J. 333=20 C. W. N. 166.
2. *Q. Emp.* v. *Palkoo Nushyo*, 2 W. R. 43.
3. *Q. Emp.* v. *Goburdhan Bera*, 6 W. R. 80.
4. 2 W. R. Criminal Letters No. 1. Present, the Hon'ble C. C. Trevor, J.

notice of an offence which is not proved to have been committed[1].

No. 33. (Section 203 I. P. C —Giving false information respecting an offence committed)

NOTES.

This section applies to an information volunteered by an informant who knows or believes it to be false[2].

No. 34. (Section 209 I. P. C.—Dishonestly making a false claim in a Court of Justice.)

NOTES.

To justify a sanction to prosecute for an offence under Section 209 of the Penal Code, a mere dismissal of the plaintiff's suit is not enough. It must be proved that the claim was false to the plaintiff's knowledge[3].

No. 35 (Sections 211 I. P. C.—False charge of an offence made with intent to injure.)

NOTES.

When a false charge of a cognizable offence is made by a person to the police, the offence committed by the person making the false charge, falls within the meaning of Section 211 of the Penal Code[4].

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1. *Q. Emp. v. Ram Ruchea Sing*, 4 W. R. 2[illegible]
2. *Surju v. E.*, 7 A. L. J. 1130.
3. *Ramananda v. Public Prosecutor*, 61 I. C. 995 = 22 Cr. L. J. 467.
4. *Giridhari Naik v. Emp.*, 5 C. W. N. 727.

Proof.—The duty of the prosecution in a case under Section 211, I. P. C., is to prove by satisfactory evidence that the charge was wilfully false to the knowledge of the maker of the charge[1].

To constitute an offence under this section it is sufficient that a false complaint has been made against a person; it is not necessary that summons should be issued upon such a complaint[2]. Failure on the part of the complainant to establish the truth of his allegtions does not by any means justify the inference that the complaint was false. To secure a conviction in such class of cases it must further be established beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but entirely inconsistent with his innocence[3].

False information to police etc.—A trial, on a charge under Section 211 I. P. C., for having lodged a false information with the police without giving the informant an opportunity of proving the truth of the information before a Magistrate, is bad[4].

A statement made to the police of a suspicion that a particular person had committed an offence is not a "charge." within the meaning of Section 211 of the Indian Penal Code, nor does it amount to the

1. *Mirza Hassan v. Musst. Mahabuban*, 18 C. W. N 391=15 Cr. L. J. 355=23 I. C. 723.
2. *Hardeo Sing v. Hanuman Dat*, 26 All. 244=1904 A. W. N. 10=1 Cr. L. J. 7 (Full Bench).
3. *Ram Prosad v. Emp.* 17 C. W. N. 379.
4. *Akshoy Kumar Chakrabarty v. Emp.*, 31 C. W. N 124=A. I. R. 1927 Cal. 175.

institution of a criminal proceeding and the person making the statement cannot, on the suspicion being proved to be unfounded, be convicted under this section[1]. Where a man burns his own house, and charges another with the offence of doing so, he should be convicted and sentenced under Section 211 of the Penal Code[2].

No. 36. (Section 216 I. P C.—Harbouring an offender who has escaped from custody etc.)

NOTES.

Intention—legal warrant.—In order that a charge under Section 216, I. P. C., can be established it is necessary that the person harbouring the offender must have harboured him with the *intention* of preventing him from being apprehended. Remember also that before the offence can be said to be committed there should be a legal warrant issued for apprehending the person harboured[3]. The Madras High Court is of opinion that it is enough to show that orders of apprehension were issued against the person harboured for an alleged offence[4].

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1. In the matter of *Bramanunda Bhuttacharjee*, 8 C. L. R. 233.
2. *Q. Emp.* v. *Bhagwan Ahir*, 8 W. R, 65.
3. In re *Shripad Chadavarkar*, 52 Bom. 151=30 Bom, L. R. 70. =108 I. C. 27=29 Cr. L. J. 317=9 A. I. Cr. R. 563=I. L. T. 40 Bom. 116=A. I. R. 1928 Bom. 184.
4. *Rangaswami Goundan* v. *Emp.*, 1928 M. W. N. 588: 28 L. W. 40[illegible]; A. I. R. 1928 Mad 1147=55 M. L. J. 503.

No. 37. (Section 216-A I.P.C.—Penalty for harbouring robbers and dacoits.)

NOTES.

For the meaning of the word "harbour" read Section 216-B. "Harbouring" does not include the assisting of an accused person to escape by merely telling lies to the police as to his whereabouts[1].

The ways in which assistance may be rendered need not, for the purpose of Section 216, be restricted to the methods which may properly be regarded as *ejusdem generis* or of a like nature *e g.* by supplying food or other necessary articles[2].

No. 38. (Section 225 I. P. C.—Resistance or obstruction to the lawful apprehension of another person.)

NOTES.

Lawful custody.—Intention.—Before a conviction can be had under Section 225 it must be proved that the person whom the accused is charged with having rescued was in lawful custody at the time[3]. *Intention* is an important ingredient in an offence under Section 225 and it is for the prosecution to establish with what intention the accused acted[4].

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1. *Emp.* v. *Husain Bakhsh,* 25 All. 261=23 A. W. N. 29.
2. *Muchi Mian* v. *Emp*, 21 C. W. N. 1062.
3. *Q. Emp.* v. *Digumber Aheer,* 21 W. R. 22. *Q. Emp.* v. *Kutti,* 11 Mad. 441=1 Weir 210.
4. *Alwal* v. *Emp.,* 19 P. L. R. 1922=64 I. C. 371=23 Cr. L. J. 3 =4 U. P. L. R. (Lah) 21=A. I. R. 1922 Lah. 73.

No. 89. (Section 228 I. P. C.—Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.)

NOTES.

Contempt : what it is.—The High Courts in India have jurisdiction to punish for contempt of Court even though the contempt is made by scandalous attacks on its integrity and impartiality after the final judgment has been delivered in a case[1].

Comments in a publication reflecting on the character or impartiality of the Magistrate in the course of the criminal trial and to deprive the Court of the power of doing that which is the end for which it exists, *i.e.* to administer justice duly and impartially, constitutes a contempt of the Magistrate's Court[2].

Jurisdiction of High Court.—A tender of apology by the accused is not sufficient in a serious and grave case[3]. In the case—*Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court at Fort William in Bengal*, their lordships of the Privy Council *held* that the High Courts in the Indian Presidencies are Superior Courts of Record and that the offence of contempt of Court, and the powers of the High Courts to punish it, are the same in such

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1. *In re Satyabodha Ramchandra*, 47 Bom 76=24 B. L. R. 928=69 I. C. 84=23 Cr. L. J. 644=A. I. R. 1922 Bom. 426.
2. *Emp. v. Balakrishna Govind Kulkarni*, 46 Bom. 592=24 Bom. L. R. 16=65 I. C. 753=23 Cr. L. J. 177=A. I. R. 1922 Bom. 52.
3. *In the matter of Habib*, 6 Lah. 528=89 I. C. 833=26 Cr. L. J. 1409=26 P. L. R. 772=A. I. R. 1926 Lah. 1 (F. B.)

Courts as in the Superior Courts in England. Those powers, which formed part of the Common Law, were conferred upon the Superior Courts when they were established in the Presidency towns[1].

Intention : nature of proceeding.—To constitute an offence under this section the acts must be done *intentionally* and *with intent* to insult the Court. If the Court itself tries the case of its contempt, it is bound to record particulars contained in Section 481 Cr. P. C.,—otherwise the proceedings will be bad in law.

Cases of contempt.—A person chewing betel while being examined as a witness in a Court was held guilty under this section[2].

When a process-server, in execution of his duty, is abused and assaulted, it is contempt of Court, as it is an attempt to obstruct or unduly interfere with the administration of justice[3].

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1. 10 Cal. 109 (P. C.)=10 I. A. 171=4 Sar. P. C. J. 474. This case arose in connection with an article which appeared in the "Bengalee" newspaper on the 28th April, 1883, criticising the actions of Mr. Justice Norris in ordering a *Shalagram* (a stone Idol) to be brought into Court. Banerji was convicted by the High Court.

2. In re *Bhavani Mudaliyar*, (1883) 1 Weir 217.

3. *A. H. Skone* v. *M. Bason*, 29 C. W. N. 766. See Contempt of Court Act (Act 12 of 1926). This Act has been given in Part IV with full notes.

No. 40. (Sections 232 & 242 I. P. C.—Counterfeiting or performing any part of the process of counterfeiting the Queen's coin and possession of counterfeit coin.)

NOTES.

Intention : resemblance.—For definition of "counterfeiting coin" read Section 231, I. P. C. In order to constitute the offence defined by Section 231 of the Indian Penal Code, it is not necessary that the counterfeit coin be made with the primary intention of its being passed as genuine ; it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such[1].

Proof.—Where the charge is one of counterfeiting Queen's coin—direct proof of fabrication is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. A *guilty knowledge* of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first, but such guilty knowledge afterwards may be proved either directly or indirectly from the surrounding circumstances[2].

No. 41. (Section 235 I. P. C.—Possession of instrument or material for the purpose of using the same in counterfeiting coin.)

NOTES.

Intention must be proved. Mere possession of

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1. *Emperor* v. *Qader Baksh*, 30 All. 93=6 C. R. L. J. 395 (Judgment of Banerjee and Aikman JJ).
2. *Parushulla Mundul* v. *Kheroo Mundul*, 23 W. R. 4.

instrument and material is no offence.—To constitute an offence under Section 235, possession of such instruments should be *with the intention of counterfeiting* coins and the *intention* must be proved to establish the charge. Where dies found were incapable of striking, a complete coin, it cannot be inferred against the accused that his *intention* was to manufacture coins[1].

Exclusive possession.—Exclusive possession by the accused of the place where the criminal articles are found must be proved[2]. Where the police in course of a raid of a house, occupied by the accused and another person recovered a box containing counterfeiting materials, but found nothing in the box to connect the accused with it, *held* that as the house was not in the possession of the accused alone, he could not be convicted unless there was something to show that he was aware of the contents of the box[3].

Conviction under Sections 232 & 235 is bad.—The accused persons were charged under Sections 232 and 235 Penal Code, for being in possession of implements and materials for counterfeiting King's coin and with actually counterfeiting King's coin and sentenced to various terms of imprisonment under each section. It was *held* that the possession of such implements

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1. *Khadim Hussain* v. *Emp.*, 5 Lah. 392=26 Cr. L. J. 247=84 I. C. 247=A. I R. 1925 Lah. 22
2. *Q. Emp.* v. *Sangam Lal*, 15 All. 129=13 A. W. N. (1893) 48.
3. *Mohammed Box* v. *E.*, A. I. R. 1935 Lah. 39.

and materials is part and parcel of the transaction of counterfeiting coin and therefore, the sentences passed on the appellants under Section 235 I. P. C., were illegal[1].

No. 42. (Section 243 I. P. C.—Possession of Queen's coin by a person who knew it to be counterfeit when he became possesed thereof.)

NOTES.

Possession by a servant of a counterfeit coin—if master can be implicated.—There is a clear distinction in law between "*custody*" and "*possession*". The Penal Code has not used the expression "custody" in dealing with servant's possession on behalf of the master. Master's knowledge about possession must be strictly proved ; otherwise conviction will be bad in law[2].

No. 43. (Section 264 I. P. C.—Fraudulent use of false instrument for weighing.)

NOTES.

Intention.—Intention is an essential part of the offence of fraudulently using false instruments for weighing and in the absence of any evidence of such intention, there can be no conviction[3].

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1. *Bishan Das v. Emp.*, 71 I. C. 700=24 Cr. L. J. 236=A. I. R. 1924 Lah. 78.
2. *Emp. v. Fateh Chand Agarwalla*, 21 C.W.N. 33.
3. *Government v. Kangalee Muduk*, 18 W.R. 7.

No. 44. (Section 269 I. P. C.—Negligently doing any act known to be likely to spread infection of any disease dangerous to life.)

NOTES.

Cases.—A mother refused to allow her daughter suffering from small-pox to be removed to hospital in accordance with an order made by District Magistrate, unless she was allowed to accompany her. She was convicted under Section 269 of the Penal Code ;—*held*, there was offence under this section[1].

K, knowing that he was suffering from cholera entered a train as a passanger without informing, the Railway Company's servants, of his condition. M knowing of K's condition bought K's ticket and travelled with him. K was convicted under Section 269 of the Penal Code and M of abetment[2].

No. 45. (Section 272 I. P. C.—Adulterating food or drink intended for sale, so as to make the same noxious.)

NOTES.

Ghee mixed with fat.—Mixing pig's fat with *ghee* for sale is no offence under this section. "Noxious as food" means unwholesome as food and injurious to health and not repugnant to one's feelings[3].

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1. *S. Cahoon* v. *A. Mathews*, 24 Cal. 494=1 C.W.N 274.
2. *Q. Emp.* v. *Krishnappao and Murugappa*, 7 Mad. 276=1 Weir 226.
3. *Ramdayal* v. *Emp.*, 46 All. 94=21 A. L. J 875=A. I. R. 1924 All. 214 (1).

No. 45-A. (Section 273 I. P. C.—Sale of noxious food.)

NOTES.

Intention—milk mixed with water.—There is no presumption in law that the accused knew or had reason to believe that an article of food would be unfit for consumption, and like other ingredients of the offence this has to be proved[1]. Selling milk adulterated with water is not an offence under this section[2].

No. 45-B. (Section 279 I. P. C.—Rash driving or riding on a public way.—The Motor Vehicles Act—Section 5.)

NOTES.

The Motor Vehicles Act.—The facts which have to be proved in both cases, *i.e.*, under Section 279 I. P. C. and the Motor Vehicles Act, Section 5, are substantially the same, and the offence comes equally well under either definitions and there can be no question of prejudice to the accused whether the conviction is under the one or the other[3].

Liability of driver and not owner.—The actual driver and not the owner of the carriage, is liable under Section 279 of the Penal Code in case of a collision and injury to another arising out of rash driving[4].

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1. *Mukunda Ram* v. *Emp.*, 25 Cr. L. J. 537=77 I.C. 1001=A. I. R. 1922 All. 273 (1).
2. *Dhawa* v. *Emp.*, 26 Cr. L. J. 1441 (1)=89 I. C. 961 (1)=A. I. R. 1926 Lah. 49.
3. *Charan Sing* v. *Emp.*, 23 A. L. J. 790=26 Cr. L. J. 1254=88 I. C. 998=A. I. R. 1925 All. 798.
4. *A. W. Lattymore* v. *Pernendoo Deo Rai*, 14 W. R. 32.

Case of rash riding.—The accused was tried for rash riding on a public way under Section 279 of the Indian Penal Code. He contended that there was no proof that any person was on the road. Even in absence of such a proof it was competent to the Court to take into its consideration the probability of persons using the public way—*held*, the accused was rightly convicted[1].

No. 46. (Section 302 I.P.C.—Murder.)

NOTES.

Murder—culpable homicide.—Whoever causes death by doing an act with the *intention* of causing death, or with the *intention* of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide[2]. *Homicide may not be an offence if it comes within the purview of the general exceptions mentioned in Chapter IV, I.P.C. Otherwise homicide may amount to murder defined in Section 300 I.P.C., or culpable homicide not amounting to murder, defined in Section 299, I.P.C., or death caused by negligence mentioned in Section 304-A, I.P.C.* Section 300 says that culpable homicide is murder if the act by which the death is caused is done with the *intention* of causing death or with the *intention* of causing such bodily injury as the offender knows to be likely to cause death or which is sufficient in the ordinary course of nature to cause death or if the person com-

1. *Q. Emp. v. Hormusji Nowroji Lord*, 19 Bom. 715.
2. Section 299 I. P. C.

mitting the act knows that it must in all probability cause death. There are five exceptions to Section 300 I.P.C., which mention the cases where culpable homicide does not amount to murder.

Distinction between culpable homicide and murder.— It is very important to know the line of distinction between murder and culpable homicide not amounting to murder. This matter was fully discussed by Sir Barnes Peacock, Kt., C.J. (Trevor and Norman JJ. concurring) in the case of *Queen* v. *Gorachand Gopi*[1]. The important portion from the judgment is reproduced below :—

"There are, in my opinion, several important distinctions, between murder and culpable homicide. An offence cannot amount to murder unless it falls within the definition of culpable homicide : for Section 300 merely points out the cases in which "culpable homicide is murder". But any offence may amount to culpable homicide without amounting to murder. Culpable homicide is not murder if the case falls within any of the exceptions mentioned in Section 300.

"The causing of death by doing an act with the *intention* of causing death is culpable homicide. It is also murder, unless the case falls within one of the exceptions in Section 300.

"Causing death with the *intention* of causing bodily injury to any person, if the bodily injury *intended* to be inflicted is sufficient in the ordinary course of

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1. 5 W.R. 45 (Cr.)

nature to cause death, in my opinion, falls within the words of Section 299 'with the *intention* of causing such bodily injury as is likely to cause death,' and is culpable homicide. It is also murder, unless the case falls within one of the exceptions in Section 300, Clause 3. Causing death by doing an act with the *knowledge* that such act is likely to cause death is culpable homicide, but it is not murder even if it does. not fall within any of the exceptions mentioned in Section 300, unless it falls within Clause 2, 3, or 4 of Section 300, that is to say, unless the act by which death is caused is done with the *intention* of causing such bodily injury as the offender knows to be likely to cause the death of a person to whom the harm is caused or with the *intention* of causing bodily injury to any person, and the bodily injury *intended* to be inflicted is sufficient in the ordinary course of nature to cause death, or unless the person committing the act knows that it is so imminently dangerous that it must in all probability, cause death, or such bodily injury as is likely to cause death.

"In speaking of acts I, of course, include illegal omissions. There are many cases falling within the words of Section 299 'or with the *knowledge* that he is likely by such act to cause death', that do not fall within the 2nd, 3rd or 4th clause of Section 300, such for instance as the offences described in Sections 279, 280, 281, 282, 284, 285, 286, 287, 288 and 289, if the offender *knows* that his act or illegal omission is likely to cause death, and if in fact it does cause death. But although he *may know* that

the act or illegal omission is so dangerous that it is likely to cause death, it is not murder, even if death is caused thereby, unless the offender *knows* that it must in all probability cause death, or such bodily injury as is likely to cause death, or unless he *intends* thereby to cause death, or such bodily injury as is described in Clauses 2 or 3 of Section 300........."

"From the fact of a man's doing an act with the knowledge that he is likely to cause death, it may be presumed that he did it with the *intention* of causing death, if all the circumstances of the case justify such a presumption."

Motive, intention, knowledge, onus.—When the facts are clear, it is immaterial that no motive has been proved. The man who does an act must be held to *intend* its consequences ; if he pleads otherwise it is for him to prove the same. Motive, though not a *sine qua non* for bringing the offence home to the accused, is relevant and important on the question of intention[1].

Circumstantial evidence in a murder case :—Circumstantial evidence requires a high degree of probability that is sufficiently high from which a prudent man, considering all the facts and realising that the life or liberty of an accused person depends upon his decision, is justified in holding that the accused committed the crime. It is only then that it can

1. *Hazarat Gulkhan* v. *Emp.*, 32 C. W. N. 345=47 C. L. J. 240=109 I. C. 482=29 Cr. L. J. 546=A. I. R. 1928 Cal. 430.

furnish a basis for conviction for murder[1]. (*See 'Part V, Chapter XIII on Evidence*).

Plea of better medical treatment.—The mere plea that more prompt or better treatment would have saved the deceased cannot exonerate the accused from liability for the death of the deceased[2].

Plea that the case comes under the exceptions to Section 300 I. P. C.—Onus.—It is for the accused to substantiate his plea.

Death caused by simple injury.—Where death is caused as a result of simple injuries, the accused may be convicted for causing simple hurt,—or the case may come under Section 325 I. P. C[3].

Plea of guilty.—In capital sentence cases where there is any doubt as to whether the accused fully understands the meaning and effect of a plea of guilty—it is advisable for the Court to take evidence and proceed with the trial and not to convict solely on the plea of the accused[4].

Tender age.—Sentence.—In the case of *Empress* v. *Jasha Bewa*, the accused, who was a girl of sixteen years of age, was found guilty under Section 302, I. P. C. The High Court did not sentence her to the extreme penalty of the law but directed that she be

1. *Dina* v. *Emp.*, 109 I. C. 912=29 Cr. L. J. 640.
2. *Mami* v. *Emp.*, 108 I. C. 164=29 Cr. L. J. 345.
3. *Bhajan Das* v. *Emp.*, 24 Cr. L. J. 421=72 I. C. 533=A. I. R. 1924 Lah. 218. and *Mahabir* v. *Emp.*, 19 A. L. J. 295.
4. *Q. Emp.* v. *Bhadu*, 19 All. 119=16 A. W. N. (1896) 192.

transported for life[1]. There are also cases where accused persons of tender age were sentenced to death[2]. The Penal Code simply provides alternative punishments for murder and there is nothing which takes away, from the Court, the duty to see that in a particular case, notwithstanding the conviction for murder, the punishment fits the crime[3]. Where there is doubt in a murder case, the Court should not pass the lesser sentence, *e. g.*, transportation for life. If the doubt be a reasonable one the accused must be acquitted[4]. The circumstances, that the accused is the only son of a widow and that after the crime he displays considerable remorse, ought not to be taken into consideration in passing the sentence but where the accused committed the offence in a fit verging on temporary insanity such fact may be considered in passing the sentence[5].

No. 47. (Section 304 I. P. C.—Culpable homicide not amounting to murder.)

NOTES.

This section is divided into two parts. The first part deals with a case where the act by which death is caused is done with the *intention* of causing

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1. 11 C. W. N. 904. This view was taken in the case of *Sheobalak Prosad* v. *Emp.*, A. I. R. 1928 Nag. 108.
2. *Amir* v. *Emp.*, 112 I. C. 345 (2)=A. I. R. 1928 Lah. 531.
3. *Emp.* v. *Dukari Chandra Karmakar*, 33 C. W. N. 1227.
4. *Jadu Ahir* v. E., A. I. R. 1935 All. 919.
5. *Mominaddi Sarder* v. *Emperor*, 39 C. W. N. 262=A. I. R. 1935 Cal. [illegible]. (Judgment of Patterson and Cunliffe JJ.).

death or of causing such bodily injury as is likely to cause death. The second part provides for a case where the act is done with the *knowledge* that it is likely to cause death but without any *intention* to cause death or to cause such bodily injury as is likely to cause death. The Judge, in his charge, has got to explain the two different parts of the section and ask the jury to consider under which part of the section, the offence of the accused, if any, might come. In case of a sudden fight, if the fatal blow was struck on the heat of the moment, the case will come under the second part[1].

No. 48. (Section 304-A I. P. C.—Causing death by rash and negligent act.)

NOTES.

Straight J., of the Allahabad High Court has observed that "Criminal rashness is hazarding a dangerous or wanton act *with the knowledge* that it may cause injury *but without intention* to cause injury or *knowledge* that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequence[2]".

Rash act.—A *Kabiraj* operated on a man for internal piles by cutting them out with an ordinary knife. The man died from hæmorrhage; *held* the Kabiraj was guilty under Section 304-A of the Penal Code, for causing death by doing a rash and negligent act[3].

1. *Abdul Majid* v. *Emp.*, 152 I. C. 860.
2. In the matter of *Idu Beg*, 3 All. 776.
3. *Sukaroo Kabiraj* v. *The Empress*, 14 Cal. 566.

No defence.—A motor driver who is charged under Section 304-A for causing the death of a pedestrian by rash and negligent driving cannot plead, in his defence, the negligence of the pedestrian[1].

Where the section has no application.—Where death is caused by an act which is in its nature criminal, Section 304-A of the Indian Penal Code has no application[2].

No. 49. (Section 309 I. P. C.—Attempt to commit suicide.)

NOTES.

Where no offence.—Accused, with the intention of committing suicide by throwing herself into a well, ran to the well where she was arrested. She was convicted under Section 309, I. P. C. It was *held* that as she might have changed her mind and as she was caught before she did anything which might be regarded as the commencement of the offence, she was not guilty of an offence under this section[3].

No. 50. (Section 312 I. P. C.—Causing miscarriage.)

NOTES.

When offence.—Where a woman was acquitted of a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month and that there was nothing which could be called even a rudimentary foetus or child, it was *held* that the

1. *Mohammad Bux* v. *Emp.*, 158 I. C. 330.
2. *Q. Emp.* v. *Damodaran*, 12 Mad. 56=1 Weir 326.
3. *Q. Emp.* v. *Ramakka*, 8 Mad. 5=1 Weir 390.

acquittal was bad in law[1]. The offence defined in Section 312 can only be committed when a woman is, in fact, pregnant[2]".

No. 51. (Section 316 I. P. C.—Causing death of a quick unborn child by an act amounting to culpable homicide.)

NOTES.

Treatment.—Case of gross ignorance or rashness in the treatment of a pregnant woman will be punishable under this section, if in the circumstances they would amount to the offence of culpable homicide and the woman's death had been the result[3].

No. 52. (Section 318 I. P. C.—Concealment of birth by secret disposal of dead body.)

NOTES.

Ingredients.—The prosecution must, first, establish to the satisfaction of the Court, the fact of the birth of the child. The secret burying or any other sort of disposal of the dead body must also be proved.

No. 53. (Section 323 I. P. C.—Punishment for voluntarily causing hurt.)

NOTES.

Hurt: Grievous hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. 'Voluntarily causing hurt' has been de-

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1. *Q. Emp.* v. *Ademma*, 9 Mad. 369=1 Weir 331.
2. *The Queen* v. *Kabul Pattur and Jhumpa*, 15 W. R. 4.
3. *Morgan* and *Macpherson.*

fined in Section 321 I. P. C. Grievous hurt has been defined in Section 320 I. P C.

No. 54. (Section 325 I. P. C.—Punishment for voluntarily causing grievous hurt.)

NOTES.

Cases of grievous hurt.—The designation of a grievous hurt (Sec. 320), which causes severe bodily pain, applies only when such effect actually lasts for a period of twenty days and not when the sufferer dies before that period has expired. Where the wound was not dangerous to life but death was caused within twenty days due to tetanus which supervened, *held,* that the wound was not grievous hurt[1].

Rioting.—Grievous hurt : Separate sentence.—When a person is charged under Section 147 I. P. C. and also under Section 325 read with Section 149, it is illegal to pass separate sentences under the two charges. The sentence if any, passed under Section 147, is bad in law[2].

No. 55. (Section 341 I. P. C.—Punishment for wrongful restraint.)

NOTES.

Bonafide acts : good faith.—Wrongful restraint has been defined in Section 339 I. P. C. Section 341 provides for punishment for wrongful restraint. Where the obstruction is put up *in 'good faith,* the

1. *Mahindra Sing v. Emp.*, 26 Cr. L. J. 294=84 I. C. 438=A.I.R. 1925, Lahore, 297 (1).
2. *Harendra Burman v. K. Emp*, 35 C. W. N. 345.

accused is not guilty of wrongful restraint[1]. Act done in good faith under the *belief* that it is justified by law is not an offence under this section[2]. Where the obstruction was put up by the accused in good faith in the belief that he had a lawful right to obstruct the complainant from going along the path, he was entitled to the benefit of the exception to Section 339 I. P. C., even though he did not clearly raise that defence in the lower Court[3].

Case of Customary right.—A conviction, under Section 341, I. P. C., for obstructing a person in proceeding along a path lying over the accused's private land, in the exercise of the former's right as a villager, can only be sustained when a customary right of way in respect of the path in question has been proved[4].

Civil Court decree.—In deciding whether a person, accused of wrongful restraint for erecting a fence over a way, is guilty or not—the Magistrate should confine his attention to enforcing the terms of the decree of the Civil Court passed in favour of the accused[5].

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1. *Kalidas Raha* v. *Deo Dhari Mistri*, 41 C. L. J. 623=30 C.W.N. 192=A. I. R. 1925, Cal. 1214.
2. *Kanai Lal Ghosal* v. *Q. Emp.*, 24 Cal. 885.
3. *Kalidas Raha* v. *Deo Dhari Mistri*, 30 C. W. N. 192.
4. *Prannath Kundu* v. *K Emp.*, 33 C. W. N. 915.
5. *Rash Mohan Paul* v. *Mohim Chandra Chakravarty*, 5 C.W.N. 215.

No. 56. (Section 342 I.P.C.—Punishment for wrongful confinement.)

NOTES.

Wrongful confinement has been defined in Section 340, I. P. C.

Police-officer : excessive exercise of power.—In case of a Police-officer being charged under Section 342, where there was *no malice, no intention* of doing an act of the nature spoken of in Section 339, or 340, and voluntary obstruction or restraint, though there was probably excessive and mistaken exercise of powers, *held*, there was no offence under this section[1]. Where a constable had no power to arrest without a warrant, *held*, he committed the offence of wrongful confinement, by arresting the complainant[2].

Time.—It has been *held* by Markby and Kemp, JJ., in the case *Q. E.* v. *Suprosonno Ghosal*[3], that the time during which the party is kept in wrongful confinement is immaterial, except with reference to the extent of punishment.

Case of mischief—not wrongful confinement.—Where the complainant had for the purpose of removal, placed certain goods upon a cart, and accused came and unyoked the bullocks and turned the goods off the cart on the road, *held*, a conviction under Section 341 of the Penal Code could not be sustained; but

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1. *Budroon Hossain* v. *Moulvee Mahamed Yusuff*, 24 W. R. 51.
2. In re *Mukunda Babu Vethi*, 19 Bom. 72.
3. 6 W. R. 88.

that there was such "mischief" as to bring the offence within Section 425[1].

No. 57. (Section 352 I. P. C.—Punishment for assault or criminal force otherwise than on grave provocation.)

NOTES.

Read the explanation to Section 352 I. P. C. "This section provides for the usual punishment for an assault or for using criminal force. A mitigation of punishment where there is grave and sudden provocation is admitted here as in cases of culpable homicide and of hurt." (*Morgan and Macpherson*).

Arrest without authority.—Where the Sub-Inspector, who had no right to enter or attempt to search a house, did so and resistance was offered—no offence under this section was committed[2].

No. 58. (Section 363 I.P.C.—Punishment for kidnapping.)

NOTES.

The offence of kidnapping has been defined in Secs. 360 and 361 I. P. C. Sec. 361 relates to kidnapping from lawful guardianship.

No. 58-A. (Sections 361, 362 & 366 I. P. C.—Kidnapping from lawful guardianship, kidnapping or abducting woman to compel her marriage etc.)

NOTES.

Abduction.—Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person[3].

1. *Juggeswar Das* v. *Kaylash Chandra Chatterji*, 12 Cal. 55.
2. *Pitam Lal* v. *Emp.*, 24 Cr. L. J. 276=71 I. C. 996=A. I. R. 1923 All. 433.
3. Section 362 I. P. C.

Section 366 I. P. C., requires that abduction must be—(a) with the *intent* that the woman may be compelled or knowing it to be likely that she will be compelled to marry any person against her will, or (b) in order that she may be forced or seduced to illicit intercourse[1].

Kidnapping when complete.—It was *held* by a Full Bench of the Calcutta High Court that the offence of kidnapping a girl from lawful guardianship is complete when the minor is actually taken from lawful guardianship ; it is not an offence continuing so long as she is kept out of such guardianship[2]. Rampini, J., *observed* that the offence is not necessarily complete as soon as the minor is removed from the house of the guardian ; when the act of kidnapping is complete is a question of fact to be determined according to the circumstances of each case.

Accused need not know the minor's guardian.—It is not necessary for a conviction under Sec. 366, I. P. C., that the accused should know definitely who the guardian of the minor girl is[3].

Father removing a minor Hindu girl from the house of her husband.—The husband of a Hindu girl of fifteen is her lawful guardian, and if the father of the minor takes away the girl from her husband without the

1. *Bhajan Das* v. *Emperor*, 72 I.C. 533=24 Cr. L. J. 421=A. I. R. 1924 Lah. 218.
2. *Nemai Chattoraj* v. *Q. Emp.*, 27 Cal. 1041 (F.B.)=4 C. W. N. 645. See also *Chekutty & Ors.* v. *E.*, 26 Mad. 454=2 Weir 296.
3. *Idu* v. *E.*, A. I. R. 1924 Oudh. 335.

latter's consent, such taking away amounts to kidnapping from the lawful guardianship, even though the father had no criminal intention in so doing[1].

Case of temporary possession.—If the facts are not inconsistent with the continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping even though the actual possession of the minor was temporarily with a friend or other person[2].

Consent of kidnapped minor.—The consent of a kidnapped minor is immaterial. It is not necessary for a conviction, under Section 361, that the taking or enticing should be shown or proved to have been by means of force or fraud[3].

Right of mother.—A mother cannot have right to the custody of her legitimate children adversely to the father[4].

Right of elder brother of a minor girl :—Under the Hindu law, in the absence of the father, the eldest brother has the right to arrange for the marriage of his sister, and his right is superior to that of a mother. Where, therefore, the father having died, the eldest brother gives his sister in marriage against her will, although she is about 16 years of age, and the mother is not a consenting party, the brother commits

1. In the matter of the petition of *Dhuronidhur Ghose*, 17 Cal. 298. (Judgment of Tottenham and Banerjee JJ.)
2. *Jagannadha Rao & Ors.* v. *Kamaraju*, 24 Mad. 284=10 M.L.J. 405=1 Weir 349.
3. *Queen Empress* v. *Bhungee Ahur*, 2 W. R. 5.
4. *Emperor* v. *Prankrishna Surma*, 8 Cal. 969=11 C. L. R. 6=4 Shome L. R. 280.

no offence, and cannot be convicted of abduction or kidnapping[1].

Intention of accused.—Where a woman is abducted not for the purpose of illicit intercourse, but for the purpose of bringing pressure to bear on her husband in the matter of a criminal case instituted by him, a conviction under Sec. 366 I. P. C., is illegal[2].

Proof of legal marriage—where necessary.—Where a a woman is kidnapped from the custody of her husband, the prosecution must prove a legal marriage between the woman and her husband If no such legal marriage is proved there is no enticement from lawful guardianship, and consequently no offence under Section 366 or 368 I. P. C[3].

Points to be proved in a case of kidnapping a minor girl.—In order to support a conviction for kidnapping from lawful guardianship the following points are required to be proved :—

(1) That the girl kidnapped was then a minor under sixteen years of age.

(2) That the girl was in the keeping of a lawful guardian.

(3) That the accused took or enticed the girl out of such keeping.

1. *Nek Ram* v. *E.*, A. I. R. 1935 All. 1920.

2 *Narain & Ors.* v. *Emperor*, 155 I. C. 662.

3. *Mst. Wasima* v. *E.*, A. I. R. 1935 All. 506=156 I.C. 914=36 Cr. L. J. 1031.

(4) That he did so without the consent of the lawful guardian.

Note.—The mere fact that the minor leaves the protection of her guardian does not put her out of the guardian's keeping. But if the minor abandons her guardian with no intention of returning, she cannot be held to continue in the guardian's keeping[1].

Where circumstances are not inconsistent with the innocence of accused there can be no conviction[2].

Charge of Kidnapping. Can there be conviction for abduction? Kidnapping and abduction are separate offences[3].—A judge cannot, except by framing a fresh charge, direct the jury to convict an accused for the offence of abduction where the only charge framed against him is for the offence of kidnapping[4].

Simple abduction is no offence.—Bare abduction *per se* without the intention pointed out in the different sections dealing with the subject is not an offence under the law[5].

No. 59. (Section 376 I. P. C.—Punishment for rape.)

NOTES.

Definition.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

1. *R. W. Valliant* v. *Mrs. Eleazar*, 30 C. W. N. 215.
2. *Alla Rakha* v. *Emp.*, 9 Lah. L. J. 396 C = 103 I. C. 838 = 28 Cr. L. J. 758 = A. I. R. 1927 Lah. 638.
3. *Mafizaddi* v. *Emp.*, 45 C. L. J. 561 = 31 C. W. N. 940 = 104 I. C. 245 = 28 Cr. L. J. 805 = A. I. R. 1927 Cal. 644.
4. *Isu Sheikh* v. *Emp.*, 31 C. W. N. 171 = 99 I. C. 937 = 28 Cr. L. J. 201 = 45 C. L. J. 584 = A. I. R. 1927 Cal. 200.
5. *Khalil Nasya* v. *Emp.*, 6 C. W. N. 208.

(1) Against her will.

(2) Without her consent.

(3) With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

(4) With her consent, when the man knows that he is not her husband, and her consent is given because she believes that he is one to whom she is, or believes herself to be lawfully married.

(5) With or without her consent, when she is under fourteen years of age.

Explanation—Penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape[1].

Sec. 376 provides for punishment for rape. In that section the words "unless the woman raped is his own wife............or with both" were inserted by Act. 29 of 1925.

Delay.—Where in a prosecution for the offence of rape, it was found that the woman made the "first information report" one day after the occurrence even though the police-station was near at hand, *held* that under the circumstances the conviction was not sustainable[2].

Evidence of victim:—It is hardly possible that any self-respecting lady of position would come forward in a Court of Justice to make a humiliating statement

1. Section 375 I. P. C.

2. *Inder Singh* v. *Emp.*, 9 Lah. L. J. 384.

against her honour, of having been raped, unless it is absolutely true[1]. When the victim of an offence of rape is an innocent girl of tender age, her evidence will carry great weight. A statement made by her by way of disclosure immediately after the occurrence will strongly corroborate her case and go to prove the consistency of her conduct and also want of her consent[2].

But in the majority of cases of rape it would be quite unsafe to convict an individual merely on the accusation of the woman who had been raped[3].

Some High Courts have even *held*, that conviction for the offence of rape on the uncorroborated testimony of the complainant would be most dangerous[4].

Consent of victim.—Where the evidence shows that the woman who was alleged to have been raped did in fact consent to the sexual intercourse, a conviction under Section 376 I. P. C., is not sustainable[5]. The absence of any mark of injury on a person alleged to

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1. *Labh Singh* v. *Emp.*, 24 Cr. L. J. 877=75 I. C. 77=6 Lah. L. J. 111=A. I. R. 1923 Lah. 291 (But see *contra* 67 I. C. 827).
2. *Sohsalal Bania* v. *Emp.*, 25 Cr. L. J. 1214=82 I. C. 142=A. I. R. 1925 Nag. 74.
3. *Kashi Ram* v. *Emp.*. 67 I. C. 827=23 Cr. L. J. 475 Lah. (But see 75 I. C. 77 *above*).
4. *Mahla Ram* v. *Emp.*, 25 Cr. L. J. 74=75 I. C. 986=A. I. R. 1924 Lah. 669 and *Maunglea Tin* v. *Emp.*, 27 Cr. L. J. 1284=97 I. C. 180=A. I. R. 1927 Rang. 67.
5. *Beli Singh* v. *Emp.*, 9 Lah. L. J. 337.

have been raped is a factor going against the commission of the crime[1].

Sentence.—Crimes of violence upon women who are not in a position to defend themselves must be put down with a strong hand and it would be a very sad state of affairs if criminals were to carry an impression that to criminally assault a woman or to rape her was not a very serious matter and that they could always satisfy their unholy passion if only they were prepared to undergo a comparatively short term of imprisonment[2].

In Bengal, under the new Act of 1936, whipping can be inflicted in addition to the punishment mentioned the Sec. 376 I. P. C.

No. 60. (Section 379—Punishment for theft.)

NOTES.

Definition.—Theft has been defined in Sec. 378. Whoever intending to take dishonestly any movable property out of the possession of any person, without that person's consent, moves that property in order to such taking, is said to commit theft. Read explanations to Sec. 378.

Intention—good faith.—Intention is the gist of the offence and there can be no theft, unless there be an intention to take the property dishonestly.

Dishonest *intention* must be proved by the prosecution. Where an accused removed crops honestly

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1. *Jeewan* v. *Emp.*, 1935 A. W. R. 1404.
2. *Kala* v. *Emp.*, 30 Punj. L. R. 437=116 I. C. 883=30 Cr. L. J. 699=A. I. R. 1929 Lah. 584.

believing that they were his, he committed no offence[1]. The *intention* to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another person[2]. The removal of property in the assertion of a *bona fide* claim of right though unfounded in law and fact does not constitute theft[3].

Mistake of fact.—Ignorance of law.—When a person takes another man's property, believing under a mistake of fact and in ignorance of law that he has a right to take it, he is not guilty of theft because there is no dishonest *intention*, even though he may cause wrongful loss[4].

Taking of debtor's property.—The removal, by a creditor, against the will of his debtor, of property belonging to such debtor with the view of compelling such debtor to discharge his debt amounts to theft within the meaning of Sec. 379 of the Indian Penal Code[5]. A Full Bench of the Calcutta High Court on a review of the earlier cases has also taken the same view[6].

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1. *Bodh Kishen Goala* v. *Emp.*, 4 P. L. T. 608=72 I. C. 614=24 Cr. L. J. 454=A. I. R. 1924 Pat. 125
2. Q. *Emp.* v. *Madaree Chowkeedar*, 3 W. R. 2.
3. *Mati Lal Dey* v. *Emp.*, A. I. R. 1935 Cal. 675 (*Judgment of Lort Williams and Jack JJ.*)
4. *Queen Empress* v. *Nagappa*, 15 Bom. 344.
5. *Queen Empress* v. *Agha Muhammad Yusuf*, 18 All. 88=15 A. W. N. (1895) 233. See *Bakhtawar* v. *Emp.*, 25 Cr. L. J. 650=81 I. C. 138=A. I. R. 1925 Lah. 131 (2).
6. *Sree Charan Chungo* v. *Emp.*, 22 Cal. 1017.

Husband and wife.—There is no presumption of law that a wife and a husband constitute one person in India for the purpose of criminal law. If the wife removes her husband's property from his house and she does so with dishonest intention, she is guilty of theft[1].

No. 61. (Section 384—Punishment for extortion.)

NOTES.

Definition.—Whoever *intentionally* puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits extortion[2]. A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

Cases.—According to the definition, the offence consists in *intentionally* intimidating a person by threats or otherwise, and thereby causing a dishonest transfer or delivery from such person to any other person[3]. The making use of real or supposed influence to obtain money from a person against his will under threat in case of refusal, or loss of appoint-

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1. *Queen Empress* v. *Butchi*, 17 Mad. 401=1 Weir 409.
2. Section 383 I. P C.
3. *Morgan and Macpherson*, 344.

ment, is extortion within the meaning of this section[1]. The tenor of a criminal charge is a fear of injury; extortion may be equally committed whether the charge threatened is true or false[2].

Picketing.—Realising fines by means of picketing is extortion within the meaning of Sec. 383 Penal Code[3]. A person, picketing a shop, causing thereby loss in trade and profit to the shop-keeper and compelling him to pay a fine for having persisted in the sale of foreign articles, can be convicted for extortion under Sec. 384 or 385 of the Penal Code[4].

No. 62. (Sec. 392—Punishment for robbery.)

NOTES.

Definition.—In all cases of robbery there is either theft or extortion. Theft is "robbery" if, in order to the committing of the theft, or in commiting the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause to any person—death or hurt or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint. Extortion is "robbery" if the offender, at the time of commiting the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant

1. *Meerabbas Ali* v. *Omed Ali*, 18 W. R. 17.
2. *Queen Empress* v. *Mobarruk & Ors.*, 7 W. R. 28.
3. *Local Govt.* v. *Hanmant Rao*, 25 Cr. L. J. 60=75 I. C. 764=A. I. R. 1921 Nag. 19.
4. *Chaturbhuj* v. *E.*, 20 A. L. J. 877=24 Cr. L. J. 62=71 I. C. 110=45 All. 137=A. I. R. 1922 All. 529.

hurt, or of instant wrongful restraint to that person or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such, but it is not robbery, unless Z is put in fear of the instant death of his child[1].

Theft.—Robbery.—Extortion.—The offence of robbery is distinct from theft or extortion, but in every robbery, either the offence of theft or the offence of extortion will be committed. It must not be supposed that what is robbery cannot be, or ceases to be extortion or theft. The line of separation is drawn not between the offence of robbery and the offence of extortion but between extortion which is robbery and extortion which is not robbery. There is in like manner a line of separation, not between theft and robbery but between the theft which is robbery and the theft which is not robbery[2]. The offence is robbery where, in committing theft, there is an *intention* followed by an *attempt* to cause hurt[3]. The word "robbery" conveys the sense of a felonious taking from the person of another by violence or by putting him in fear[4].

1. Section 390 I. P. C.
2. *Morgan* and *Macpherson*.
3. *Queen Empress* v. *Teekai Bheer*, 5 W. R. 95.
4. *Karali Prosad Dutt* v. *E. I. Ry. Comp.*, 48. C. L. J. 32.

No. 68. (Sec. 395 I. P. C.—Punishment for dacoity.)

NOTES.

Definition.—When five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so commiting, attempting or aiding, is said to said to commit dacoity[1].

Proof.—The proof should be of a robbery or attempt to rob by five or more persons, who are either joint actors, or some of whom actually commit the robbery etc, while the others are abettors, being present but not actually participating in the commission of robbery or the attempt to rob[2].

Five or more.—The offence under Sec. 391 can be committed only if the number of persons concerned in the robbery is not less than five. Hence, a finding as to the number of persons concerned being five or more is essential[3].

Evidence of identification :—Evidence of identification by itself is an insufficient basis for conviction especially when the witnesses were familiar with the faces of the persons identified[4].

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1. Section 391 I. P. C.
2. *Morgan* and *Macpherson* 355.
3. *Labh Singh* v. *Crown*, 6 Lah. 24=88 I. C. 513=26 Punj. L.R. 139=26 Cr. L. J. 1153=A. I. R. 1925 Lah. 337.
4. *Din Dayal* v. *Emp.*, 10, O. L. J. 347=A. I. R. 1224 Oudh. 295.

Act done under the impulse of religious feeling.—Where a large body of Hindus acting in concert and apparently under the impulse of religious feeling attacked certain Muhammedans who were driving cattle along public road and forcibly deprived them of the possession of such cattle, *held* that the offence, of which the Hindus were guilty, was dacoity under Section 391 of the Indian Penal Code, and not merely rioting[1].

No. 64. (Sec. 403 I. P. C.—Criminal misappropriation of property)

NOTES.

Whoever dishonestly misappropriates or converts to his own use any movable property is liable to be punished under Sec. 403 I.P.C.

A being on friendly terms with Z, goes into Z's library during Z's absence, and takes away a book without Z's consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit he is guilty of an offence under this section[2].

Loss—not a necessary ingredient.—Loss to one person, though a normal result of an act of misappropriation by another, is not an essential ingredient of the offence of criminal misappropriation which is complete if the act is done with the *intention* of causing

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1. *Q. E.* v. *Ram Baran & others*, 15 All. 299=13 A. W. N. (1893) 142.
2. Section 403 I. P. C. (Illustration).

wrongful gain to the offender irrespectively of any loss which may ensue to another person[1].

Dedicated bull.—A bull dedicated at the *Sradha* of a Hindu, and abandoned and set at large is not movable property of any person within the meaning of the Penal Code and could not, therefore, be the subject of theft, criminal misappropriation or mischief[2].

Lost coin.—The accused, finding a gold mohur on an open plain, sold it the next day and appropriated the sale proceeds. *Held*, that in the absence of any information as to the circumstances under which the coin was lost, and as it was not improbable that the property in the coin had been abandoned by the original owner, the accused could not be convicted of criminal misappropriation under Sec. 403 of the Indian Penal Code[3].

If time be allowed to make up the loss—still there is criminal offence.—The mere fact, that the prosecutor gave the prisoner time to make up his accounts and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only[4].

Proof of exact sum misappropriated—if necessary?—Where the accused is charged for an offence under Sec. 403, I. P. C., it is not incumbent upon the prosecution to establish that a definite sum has been mis-

1. *K. Simhachalam* v. *Rati Kanta Laha*, 21 C. W. N. 573.
2. *Romesh Chunder Sanyal* v. *Hiru Mondal*, 17 Cal. 852.
See also *Queen Empress* v. *Nihal*, 9 All. 348=7 A. W. N. 73.
3. *Queen Emp.* v. *Sita*, 18 Bom. 212.
4. In re *Sreekanta Biswas*, 5 W. R. 56.

appropriated. It is sufficient if the prosecution establishes that some of the money mentioned in the charge has been misappropriated, even though the amount of the exact sum so misappropriated be uncertain[1].

Charges—abetment.—When two persons are implicated in a case of criminal misappropriation or breach of trust with respect to a certain sum of money, the charges against them must be of misappropriation in one case and of abetment in the other[2].

No. 65. (Sec. 406—Punishment for criminal breach of trust.)

NOTES.

Criminal breach of trust has been defined in Sec. 405, I. P. C. Read that section.

A is a warehouse-keeper. Z, going on a journey entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for the warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust[3].

Proof of entrustment—essential —In a case of criminal breach of trust if the prosecution cannot prove how the accused came by the money, one of the first essentials of the offence that the accused was entrusted with the money, is not proved[4]. Where there was no

1. *Emperor v. Bymamji Jamsetje Chalualla*, 52 Bom. 280=30 Bom. L. R. 325=108 I. C. 505=29 Cr. L. J. 407=A. I. R. 1928 Bom. 148.
2. *Girwar Narain v. K E.*, 16 C. W. N. 600.
3. Section 405 I. P. C. (Illustration)
4. *Gour Narayan Barua v. Tilbikram Chetri*, 25 C. W. N. 838.

trust there can be no conviction under Sec. 406 I.P.C[1], as the offence of criminal breach of trust involves entrustment or dominion over property and dishonest misappropriation, conversion, use or disposal thereof[2].

The trust need not be in furtherance of a lawful object[3].

No. 65-A. (Sec. 409. I. P. C.—Criminal breach of trust by public servant etc.)

NOTES.

Laxity of supervision—if affect the question of sentence.—The fact, that the commission of the offence by the accused was facilitated on account of laxity of supervision and control on the part of the officers concerned, does not in any way mitigate the gravity of the offence so as to justify a reduction of sentence[4].

No. 66. (Sec. 411.—Punishment for disonestly receiving stolen property.)

NOTES.

Stolen property has been defined in Sec. 410 I.P.C.

Recent possession : onus.—Recent possession casts the onus upon the accused. (*This matter has been dealt with at length under the head of "Presumption" in Part V on Evidence*). Where there is a long lapse of time between the theft and the discovery, the

1. *Golam Hossain* v. *Emperor*, 22 C. W. N. 1005.
2. *Khirode Kumar Mukherjee* v. *K. E.*, 29 C. W. N. 54.
3. *Mahadeo Koshti* v. *Narayan*, 23 N. L. R. 106=101 I. C., 890=28 Cr. L. J. 506=A. I. R 1927 Nag. 225.
4. *Allah Ditta* v. *E.* 16 Lah. 44=A. I R. 1934 Lah. 677.

accused cannot be called upon to prove his innocent possession[1].

It is for the prosecution to prove that the accused received the property dishonestly[2].

The word "believe" in Section 411, is a very much stronger word than the term "suspect" and it involves the necessity of shewing the circumstances under which a reasonable man should have felt convinced in mind that the property with which he was dealing must have been stolen property. It is not sufficient to show that the accused was careless or that he had reason to suspect that the property was stolen or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired[3].

A possession of Hindu family.—The bare finding of a stolen property in the house of joint Hindu family is not such evidence of possession on the part of each of its members as would form sufficient basis for conviction[4].

Charge to Jury about presumption.—In a case under Section 411, I. P. C., in charging a jury it should be pointed out by the Judge that the possession of the stolen goods must be possession soon after theft, otherwise there can be no presumption against the accused[5].

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1. *Narayan Singh* v *Emp.*, 108 I. C. 912 (1)=29 Punj. L. R. 441=29 Cr. L. J. 464 (1)=A. I. R. 1928 Lah. 687.
2. *Kartar Singh* v. *Emp.*, 109 I. C. 674=29 Cr. L. J. 594.
3. *Archibald George Edgecombe* v. *Emp.*, A. I. R. 1928 Cal. 264.
4. *Q. Emp.* v. *Nirmal Das and others*, 22 All. 445=20 A. W. N. (1900) 169.
5. *Hatkem Mandal* v. *K. Emp.*, 24 C. W. N. 619.

No. 67. (Section 417 I. P. C.—Punishment for cheating.)

NOTES.

Cheating has been defined in Section 415, I. P. C.

A, by exhibiting to Z, a false sample of an article intentionally deceives Z, into believing that the article corresponds with the sample and thereby dishonestly induces Z to buy and pay for the article. A cheats[1].

Necessary ingredients.—In order to prove the offence of cheating it is necessary to establish (1) that some one was deceived,(2) that it was done fraudulently or dishonestly or intentionally, and (3) that by means of such deceit he was induced to change his position either by parting with property or by doing something to his own injury[2].

Parting of property must be immediate consequence of deception.—To convict a person for cheating it is necessary to show the connection between deception practised on the complainant and his being induced to part with some property[3].

Attempt to cheat—where the victim was forewarned.—A man may be guilty of an attempt to cheat although the person he attempts to cheat is forewarned and is, therefore, not cheated.

M wrote a letter to the Currency Office at Calcutta enclosing the halves of two Government Currency notes stating that the other halves were lost, and

1. Illustration to Section 415, I. P. C.
2. *Emp.* v. *Bhola Singh Ameer Singh,* 26 Bom. L.R. 211=81 I.C. 926=25 Cr. L. J. 1102=A. I. R. 1924 Bom. 303.
3. *Sarda Saran* v. *Emp.*, 21 A. L. J. 878=A.I.R. 1924 All. 209 (2)

enquired what steps should be taken for the recovery of the halves of the notes. The Currency Office having, upon inquiry, discovered that the amounts of the notes had been paid to the holder of the other halves and that the notes had been withdrawn from circulation and cancelled, sent M, the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying M in respect of the notes. The form was filled up and signed by M and returned by him to the Currency Office. *Held* M was guilty[1].

False personation at University Examination.—A, falsely represented himself to be B, at a University Examination, got hall ticket under B's name and signed answer papers to questions with B's name. A committed the offence of forgery and cheating by personation[2].

Vendor of immovable property.—The vendor of immovable property cannot be convicted of cheating because he omits to mention that there is an encumbrance on the property, unless it is shown either that he was asked by the vendor whether the property was encumbered and said was not, or that he sold the property on the representation that it was unencumbered[3].

False application to Registrar—to get a duplicate

1. *Govt. of Bengal* v. *Umesh Chandra Mitter*, 16 Cal. 310.
2. *Q. Emp.* v. *Appasami*, 12 Mad. 151=13 Ind. Jur. 53=1 Weir 480.
3. *Emp.* v. *Bishan Das*, 27 All. 561=25 A. W. N. 98=2 A. L. J. 269=2 Cr. L. J. 218.

certificate from University.—S held a Matriculation Certificate which had been issued to him by a University. C had failed to pass the Matriculation Examination. The Registrar of the University received a letter from C purporting to be signed by S, stating that his certificate had been lost and requesting that a duplicate might be issued. Enclosed with the letter was what purported to be a certificate by the Head Master of a local School, corroborating the statement as to the loss and supporting the application for the issue of a duplicate. This document had not, in fact, been written by the Head Master, and S had not in fact lost his Matriculation Certificate. C was charged with cheating and forgery to commit cheating. The charge of cheating failed, in as much as there was no proof that the deception practised by the accused on the Registrar of the University had caused harm or damage to him or to the University[1].

No. 68. (Sec. 421 I. P. C.—Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.)

NOTES.

Read Sec. 53 of the Transfer of Property Act and Provincial Insolvency Act (Act III of 1909, Sec. 56 & Act V of 1920, Sec. 54).

Bombay Presidency Towns Insolvency Act and Sec. 421, I. P. C.—A person, in Insolvent Debtors' Court at Bombay for relief, under the provisions of the

1. *King Emperor* v. *Srinivasan*, 25 Mad. 726=1 Weir 481=12 M. L. J. 68.

Presidency Towns Insolvency Act 1909, was adjudicated an insolvent. Ten days later, a creditor of the insolvent, without having obtained any sanction from the Insolvent Debtors' Court, filed a complaint against the insolvent, in the Presidency Magistrate's Court for on offence punishable under Sec. 421 of the Indian Penal Code, 1860. It was contended that the Magistrate had no jurisdiction to entertain the complaint. *Held*, that the Magistrate's jurisdiction to try the insolvent for an offence under Sec. 421 of the Indian Penal Code 1860 was not taken away by anything contained in the Presidency Towns Insolvency Act, 1909[1].

No. 69. (Sec 426 I. P. C.—Punishment for mischief.)

NOTES.

Definition.—Whoever, with intention to cause, or knowing that he is likely to cause wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in the situation thereof as destroys, or diminishes its value or utility or affects it injuriously, commits mischief. (*Read explanation to Section 425*).

A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief[2].

Sec. 425 contemplates that something should be done to the property contrary to its natural use and serviceableness[3].

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1. *Emperor* v. *Mulshankar Harinand Bhat*, 35 Bom. 63.
2. Illustration to Section 425 I. P. C.
3. *Raghupathi Aiyar* v. *Narayana Gounden*, 55 M. L. J. 767.

No mischief.—A conviction for mischief was quashed in a case where it appeared that the complainant had formerly destroyed a crop belonging to the accused, and the latter instead of complaining at once, merely bided his time and then took the complainant's crop. The taking may cause wrongful loss to the grower, and if it be dishonest, a conviction may be had for theft, but it cannot be for mischief[1].

Carelessness.—Section 425 of the Penal Code supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness[2].

Bonafide acts.—If a person deals injuriously with property in the *bonafide* belief that it is his own, he cannot be convicted of mischief[3].

In a case in which the accused was charged for cutting and carrying away bamboos, the right to which was disputed it was *held* that the accused could not be convicted of mischief under Sec. 426 as he might have acted in the *bonafide* belief[4].

Cattle trespass.—To render a person liable under Sec. 425 of the Penal Code for mischief in consequence of damage done by cattle tresspass, it must be proved that the accused had caused the cattle to enter the prosecutor's fields, knowing that by so doing he was likely to cause damage. Mere

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1. *Mahomed Foyaz* v. *Khan Mahomed*, 18 W. R. 10.
2. In the matter of *Araz Sircar*, 10 W. R. 29.
3. *Empress of India* v. *Budh Singh*, 2 All. 101.
4. *Shakur Mahomed* v. *Chunder Mohan Sha*, 21 W. R. 38.

neglect to keep the cattle from straying is not sufficient[1].

No. 70. (Sec. 447—Punishment for criminal trespass.)
and
Nos. 71, 72. (Secs. 448 & 453—Punishment for lurking house trespass etc.)

NOTES.

Criminal trespass.—Whoever enters into, or upon property in the possession of another, with intendent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent to commit an offence is said to commit "criminal trespass"[2].

House trespass; Lurking house trespass by night.—House trespass, lurking house trespass, house breaking by night etc. have been defined in Secs. 442 to 446 I. P. C.

House-breaking may be committed in six different ways mentioned in Sec. 445. Clauses 1 to 3 to Section 445 relate to cases where entry is effected by means of a passage, which is not ordinarily used, the remaining 3 clauses deal with entry by force.

Bonafide act—intention.—An intention to annoy under Section 441 is established if annoyance, in the ordinary course of event, is known by the person

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1. *Major Forbes* v. *Girish Chunder Bhattacherjee*, 14 W. R. 29, 31. See also *Emp.* v. *Bai Baya*, 7 Bom. 126 and *Emp.* v. *Medhi Hasain*, 29 All. 565 (1907) = A. W. N. 170 = 6 Cr. L. J. 13.
2. Section 441 I. P. C.

committing the act, to be the natural consequence of such act[1].

Clear finding as to accused's intention is necessary[2].

An intention to commit an offence or to intimidate insult or annoy any person in possession of the property is an essential ingredient of the offence of criminal trespass. Accordingly, entering a house under a claim of right is no offence provided the claim is a *bonafide* one.[3]

Trespass.—Complainant's possession essential.—Section 441 requires it to be proved that the complainant was in possession of the land in dispute in respect of which criminal trespass is said to have been committed. Possession must be actual and not constructive[4].

Joint property—trespass.—One member of a joint family commits no trespass by entering a house which is joint property, but is guilty of trespass if he enters a room ordinarily occupied by another member of the family[5].

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1. *Sellamuthu Servigaran* v. *Pallamuthu Karuppan*, 35 Mad. 186. Read also *Q. Emp.* v. *Rayapadayachi*, 19 Mad. 240, where intent was not presumed.
2. *Bhagawant Rao* v. *Champat Rao*, 25 Cr. L. J. 1004=81 I. C. 716=A. I. R. 1925, Nag. 50.
3. *Debi Dayal* v. *Emp.*, 25 Cr. L. J. 1017=81 I. C. 823=A. I. R. 1925 Pat. 167
4. *Parameswar Lal Mitter* v. *Emp.*, 3 Pat. L. T. 347=23 Cr. L. J. 445=67 I. C. 616=A. I. R. 1922 Pat 296.
   Iswar v. *Sital Das*, 17 W. R. 47.
5. *Pran Kristo Chunder & Jadub Chunder* v. *Biswanath Chunder*, 15 W. R. 6.

Tenant re-entering land after ejectment—trespass.— Re-entry into or remaining upon land, from which a person has been ejected by a civil process, is not criminal trespass unless the tenant's intention be to commit an offence or to intimidate, insult or annoy[1].

No. 73. (Sec. 465 I. P. C.—Punishment for forgery.)

and

73-A. (Sec. 471—Using as genuine a forged document)

NOTES.

Definitions.—Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery. (Section. 463).

Making a false document has been defined in Sec. 464 I.P.C.

A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of Ten Thousand Rupees. A commits forgery[2].

Forgery—making a false document.—A charge of forgery cannot lie against a person who was not the writer of the forged document or who did not sign the forged name. Making a false document is one thing and causing a false document to be made is another—one is an offence under Sec. 465 I.P.C., the other

1. *Gobinda Prosad & others*, 2 All. 465.
2. Illustration to Section 464 I. P. C.

is an act, at most an abetment[1]. There can be no false document where executant simply sets up a false claim but has no intention of causing belief that document was executed by another[2]. The simple making of a false document constitutes the offence of forgery under Sec. 463 of the Penal Code and it is not necessary that it be used[3].

Purpose—a matter of inference.—The purpose, with which a false document might have been prepared, is a matter of inference from the attending circumstances[4].

Intention—to conceal a fraudulent act.—It is not necessary for the purpose of constituting the offence of forgery that the false document should be made with the intention of committing a fraud or dishonesty in the future. If the intention with which a false document is made be to conceal a fraudulent act which has been previously committed the intention cannot be other than to commit fraud, and the offence of forgery, as defined in Sec. 463 is committed[5].

Using a forged document—without necessity.—Where a person, in the course of an action brought against him to gain possession of a property, uses a forged document for the purpose of supporting his good title

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1. *Haidar Ali Pradhania & Affsaruddin* v. *Emp.*, 17 C. W. N. 354.
2. *Adaikalammai* v. *Raman*, 32 Mad. 90=4 M. L. T. 463=9 Cr. L. J. 85=1 I. C. 751=19 Mad. L. J. 78.
3. Case of *Seefait Ally & Ors.*, 10. W. R. 61.
4. *Ahmed Ali & Ors.* v. *King Emperor*, 42. C. L. J. 215.
5. *Lolit Mohan Sarkar* v. *Queen Empress*, 22 Cal. 313.

though there may be no necessity for the use of it, such a user is clearly fraudulent[1].

Interpolation—where no offence.—Where the accused, after the execution and registration of a document which was not required by law to be attested added his name to the document as an attesting witness, *held* that the accused was not guilty of an offence under Sec. 471 I. P. C., as there was no alteration in a material part[2].

Using copy of forged document.—A person may be convicted of using as genuine, a document which he knew to be a forged one though he, in the first instance, produced only a copy of it[3].

Case of cheating and not forgery.—Prisoner was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts; instead of making this entry as requested, prisoner entered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery. *Held*, that the offence was not forgery but an attempt to cheat[4].

Loss of Property—not essential.—Deprivation of property, actual or intended, is not an essential

1. *Emperor* v. *Dhunum Kazee & another*, 9 Cal. 53=11 C.L.R. 169 =7 Ind. Jur. 196.
2. *Surendra Nath Ghose* v. *Emperor*, 14. C. W. N. 1076. *Mohesh* v. *Kamini Kumari*, 12 Cal. 313. *Vekantesh* v. *Baba*, 15 Bom. 44.
3. *Queen Empress* v. *Nujum Ali*, 6 W. R. 41.
4. *Queen Empress* v. *Kunju Nayar*, 12 Mad. 114=I Weir 539.

element in the offence of a fraudulent using as genuine, a document which the accused knew or had reason to believe to be false[1].

Meaning of "intent to commit fraud".—Intent to commit fraud involves something more than mere deceiving. Where a process-server, with a view to save himself from the consequence of his neglect of duty or to save himself the trouble, forged names on the notices, *held* that there was no intent to commit fraud within the meaning of Sec. 463 I. P. C[2].

Meaning of—"User".—Mere reference in a written statement put in by the accused to a document produced and put in evidence by the prosecution is not "user" within the meaning of Sec. 471. If the pleader for the accused cross-examines the prosecution witness who produces the document upon such document, even then it does not amount to user[3].

No. 74. (Section 477 I. P. C.—Fraudulent cancellation, destruction etc. of will, authority to adopt, or valuable security.)

NOTES.

Tearing.—The tearing up of a *Pattah* is the destruction of a valuable security within the meaning of Section 477 of the Penal Code[4].

A, having had certain transaction with B, wrote out an account showing his indebtedness to B and

1. *Queen Empress* v. *Abbas Ali*, 25 Cal. 512 (F. B.)=1 C. W. N. 255.
2. *Nga Tun Sein* v. *Emperor*, A. I. R. 1935 Rang. 203=156 I. C. 888=36 Cr. L. J. 1025.
3. *Emperor* v. *Tarak Nath Baidya & Ors.*, 39 C. W. N. 1309.
4. *Q. E* v. *Shiboy Mundle*. 3 W. R. 38.

signed the total. The paper was not stamped. B afterwards presented it to A and demanded payment of the total amount. A paid part only and after an altercation tore up the paper. *Held*, that the act of tearing up the paper constituted the offence of destroying a valuable security and the harm caused was such that a person of ordinary sense and temper would complain of it[1]. Accused was convicted by a Magistrate under Section 426 of the Indian Penal Code on a charge of mischief for tearing up a promissory note. *Held*, that the offence charged fell under Section 477 of the Penal Code, triable by a Court of Session[2].

No. 75. (Section 477-A I. P. C.—Falsification of accounts.)

NOTES.

Making false entry in account-book.—The making of false entries in a book or register by any person in order to conceal a previous fraudulent or dishonest act may fall within the purview of Section 477-A of the Penal Code, in as much as the intention is to defraud, but the authorities are not uniform on this point[3].

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1. *Queen Empress* v. *Ramasami*, 12 Mad. 148=1 Weir. 533.
2. In re *Madurai*, 12 Mad. 54=2 Weir 22.
3. *Emp.* v. *Rash Behary Dass*, 35 Cal. 450=12 C. W. N. 581=7 Cr. L. J. 378.
   Also see *Lalit Mohan Sarkar* v. *Queen Empress*, 22 Cal. 313.
   In re *Annasami Ayyangar*, 1 Weir 554.
   Contra. *Emp.* v. *Jiwanand*, 5 All. 221. *Queen Emp.* v. *Giridhari Lall*, 8 All. 653=6 A. W. N. (1886) 264.
   Abdul Hamid v. *Emp.*, 13 Cal. 349 at 351.

Falsification of accounts by a managing partner comes under this section[1].

Removing stamp.—The accused was placed on his trial on a charge under Sec. 477-A of the Penal Code on the allegation that he, as a clerk in the Certificate Department, had tampered with requisitions filed under the Public Demands Recovery Act, on behalf of an estate under the management of the Court of Wards, by replacing the stamps on those documents and on the accompanying *Vakalatnamas* by other used stamps taken from other papers. *Held*, that the acts alleged did not come within the scope of Sec. 477-A I. P. C[2].

No 76. (Section 482 I. P. C.—Punishment for using a false trade-mark or property-mark.)

NOTES.

Sec. 481 explains what is meant by 'using a false property-mark.'

Trade-mark.—A mark used for six years can become a trade-mark within Sec. 478[3].

Civil liabilities.—When a *bonafide* dispute exists between the parties as to the right to use a trade mark, action should be taken before a civil and not before a criminal Court[4].

1. *Mahomed* v *Mahomed Idris*, 88 I. C. 189 = A. I. R. 1925 Sind. 328.
2. *King Emperor* v. *Bibhudananda Chakravarti*, 23 C. W. N. 935 =47 Cal. 71.
3. *Lakhan Chandra Basak* v. *Emp.*, 25 Cr. L. J. 1098=81 I. C. 922 =A. I. R. 1925 Cal. 149.
4. *Surja Prasad* v. *Mohabir Prosad*, 11 C. W. N. 887 and *Dowlat Ram* v. *King Emp.*, 32 Cal. 431.

Nature of resemblance—necessary.—It is sufficient if the resemblance is such as not only shows an intention to deceive but also such as is likely to unwary purchasérs suppose that they are purchasing the articles sold by the party to whom the right to use the trade-mark belongs[1].

Merchandise Marks (Act. IV of 1889 and Sec. 482 I. P. C.—Limitation—Civil actions.)

A complainant having, in 1893, discovered that goods were being sold marked with what was alleged to be a counterfeit trade-mark, called upon the persons so selling to discontinue the use of the said alleged counterfeit trade-mark and to render an account of sales. The right to proceed further was reserved but no action was then taken. In 1898 the same trade-mark was being used and a prosecution was commenced. *Held*, that the prosecution was time-barred, the period of limitation being one year, under Section 15 of the Indian Merchandise Marks Act 1889, and that the complainant was to enforce his remedy by a civil action and for injunction[2].

Where criminal action will lie.—The aid of the Criminal Court's, in disputes over trade-mark and commercial disputes, can be invoked only in simple and clear cases. In all cases where complicated matters of registration, abandonment of user and the like are concerned, it is very much better that the dispute should be referred to the Civil Courts[3].

1. *Nagendra Nath Saha* v. *Emperor*, 34 C. W. N. 339.
2. *Ruppel* v. *Ponnusami Tevan & Ors.*, 22 Mad. 488=1 Weir 558.
3. *Ashutosh Das* v. *Keshab Chandra Ghosh*, A. I. R. 1936 Cal. 488.

76-A. (Sec. 486 I. P. C.—Selling goods marked with a counterfeit trade or property mark.)

NOTES.

In a prosecution under Sec. 486 I.P.C., the question whether purchasers are likely to be deceived by the similarity of the marks and general get-up of the two sets of goods, is not a question for witnesses to answer, but is one for the Judge to decide[1].

Accused.—Onus of proof.—The state of mind of the persons responsible for the introduction of the trade-mark is a most relevant fact which has to be established by evidence. The onus of proving want of intention is on the accused[2].

No. 77. (Section 489-A I.P.C.—Counterfeiting currency-notes or bank-notes.)

and

No. 78. (Section 489-D I. P. C.—Making or possesssing instruments or materials for forging or counterfeiting currency-notes or bank-notes.)

NOTES.

Proof.—Under Sec. 489-A of the Indian Penal Code, for the counterfeiting of a currency-note both ability and materials of a particular kind are required; whereas in a case under Sec. 489-D, it is not necessary to prove that the accused had ability to produce a counterfeit note with materials in

1. *Fakir Chand* v. *Crown*, 16 Lah. 114 = A. I. R. 1934 Lah. 687.
2. *Fakir Mahomed* v. *Emp.*, A. I. R. 1929 Rang. 322.

his possession[1]. Where it appeared that the person possessed the necessary materials and the expert gave evidence that it could be used for the purpose of counterfeiting : *held*, that the accused could be presumed to have had the intention to counterfeit, and he was liable to be convicted[2].

No. 79. (Sec. 493 I. P. C.—Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.)

and

No. 80. (Sec. 494 I. P. C.—Marrying again during the life-time of husband or wife.)

NOTES.

Marriage.—The offence under Sec. 493 I. P. C, is committed when a man, whether married or unmarried, induces a woman to become, as she thinks, his wife, but in reality his concubine. The form of the marriage ceremony depends on the race or religion to which the persons contracting the marriage may belong. When the races are mixed as in India, and religion may be changed or dissembled, this offence may be committed by a person falsely causing a woman to believe that he is of the same race or creed, as herself, thus inducing her to contract a marriage, in reality unlawful[3].

Proof.—Where polygamy is not legal, the charge of bigamy requires to be supported by the following proofs—(1) the first marriage of the accused must be

1. *Jwala v. Emp.*, A. I. R. 1928 All. 754.
2. *Ayyub v. Emp.*, 26 A. L J. 1391 = A. I. R. 1928 All. 759.
3. Morgan and Macpherson 433.

proved, (2) his second marriage must then be proved, and (3) it must be shown that his first wife or husband was alive at the time of the second marriage[1].

Conversion of a Hindu wife to Mahamedanism :—marriage.—The conversion of a Hindu wife to Mahamedanism does not, *ipso facto*, dissolve her marriage with her husband; she cannot, therefore, during his life time, enter into any other valid marriage contract. Her going through the ceremony of *Nika* with a Mahomedan is, consequently, an offence under Section 494 of the Penal Code[2]. The case will be otherwise if the wife after becoming a Mahomedan gets a declaration from the Court, as required by the Mahomedan Law, that her former marriage with her Hindu husband is dissolved.

Apostacy—effect on Mahomedan marriage—good faith.—A Mahomedan marriage is dissolved by the apostacy of either the husband or the wife. Sarafuddin J., in the Case of *Abdul Ghani* v. *Azizul Haque*, on an interpretation of the Mahomedan Law, *held* that, "the view, however, of lawyers like the authors of '*Hedaya*' and '*Fataua Alamgiri*' and some other works unanimously, is that apostacy from *Islam* whether it takes place before or after consummation dissolves *ipso facto* the marriage tie[3]."

There is a consensus of opinion that a woman's marriage during *Iddat* is illegal and sinful, but still

1. Morgan and Macpherson, 434.
2. *Govt. of Bombay* v. *Ganga*, 4 Bom. 330.
3. 16 C. W. N. 451.

a woman, marrying a second time after the apostacy of her former husband and during the period of *Iddat*, cannot be said to have gone through the form of the second marriage while her legal husband was alive. If the parties to the marriage act in good faith, even if they are mistaken as to their rights, they could not be made criminally liable under Sec. 494 I. P. C[1].

Fresh case after dismissal of the first case.—When a complaint is dismissed for failure to prove marriage, a fresh complaint cannot be made on the same facts[2].

Who can make complaint.—The husband is a person aggrieved within the meaning of Section 198 of the Criminal Procedure Code upon whose complaint the Court takes cognizance of an offence under Section 494 of the Penal Code[3]. Where the wife of a lunatic was prosecuted for *bigamy* on the complaint of the lunatic's brother, *held* that the complainant, merely as brother of the lunatic, was not a person aggrieved by such offence" within the meaning of Section 198 of the Criminal Procedure Code and the complaint could not be entertained[4].

Nature of proof necessary.—In a case under Sec. 494 I. P. C., against a woman it must be proved :—

1. That the accused had a husband living,

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1. Judgment of Holmwood J. in (1)
2. *Budh Singh* v. *Mt. Somman*, 11 Lah. L. J. 197=A. I. R. 1928 Lah. 544.
3. *The Deputy Legal Remembrancer* v. *Sarna*, 26 Cal. 336. See also In the matter of *Ujjala Bewa*, C. L. R. 523.
4. *Q. E.* v. *Bai Rukshmoni*, 10 Bom. 340.

2. That the accused married again during the life-time of such husband, and
3. That such second marriage is void by reason of its taking place during the life of such husband.

Custom :—marriage.—A conviction under Sec. 494 of the Penal Code for marrying again during the life-time of husband or wife cannot be upheld where there is evidence to show that such marriages are not unusual among persons of the same caste as the accused, and it is not proved that such marriages are void[1].

No. 81. (Sec. 497 I. P. C.—Adultery.)

NOTES.

Definition.—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery. (Sec. 497 I. P. C.)

Who can complain.—A husband can complain for adultery. In his absence a person who is in charge of the wife on behalf of the husband, can complain[2].

Elements necessary to be proved.—In support of a charge of adultery, there must be proof (1) that the woman is married (2) that there was sexual intercourse and (3) that there were circumstances which tended to shew that the accused knew, or had reason to believe that the woman was the wife of another man.

1. In re *Mussamut Chamia* 7, C. L. R. 354.
2. Section 199 Cr. P. C. *Luckhy Narain,* 24 W. R. 18.

If it appears that the intercourse was by consent or connivance of the husband, this offence has not been committed. Character of the husband and wife, and the terms on which they live together should be considered[1].

Is adultery per se an offence?—Adultery *per se* is not an offence in India. To come under Sec. 497 I. P. C., the adultery must be without consent or connivance of the husband[2].

Is adultery a continuing offence?—The offence of adultery is not a continuing offence. So, where a person has once been convicted or acquitted of the offence and subsequently he is found guilty of such a conduct he may be prosecuted again in relation to such subsequent act[3].

Condonation.—If adultery had been condoned or where the husband did not take any steps for years against the accused, and as such condonation can be presumed, there can be no conviction under Sec. 497 I. P. C[4].

Proof of marriage—unlawful marriage.—In proceedings founded on a charge of adultery, strict proof of the marriage of the woman, in respect of whom adultery is alleged, is necessary[5]. The question of the

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1. Morgan and Macpherson, 438.
2. *Sita Debi* v. *Gopal Sdran Narayan Singh*, 9 Pat. L. T. 397= A. I. R. 1928 Pat. 375.
3. In re *Shanker Tulsi Ram*. 30 Bom. L. R. 1435=A. I. R. 1928 Bom. 530.
4. *Jasimuddin Sheikh* v. *I Chohak Mistri*, 1 C. W. N. 498.
5. *Q. E. v. Smith*, 4 W. R. 31.

validity of the marriage is vital to the commission of an offence relating to marriages under Chapter XX of the Penal Code.

Nature of proof necessary.—Where the *factum* of marriage is questioned, a strict observance of the rights and customs applicable to wife must be strictly proved[1].

In a case of adultery, sexual intercourse must be proved ; the nature of sexual intercourse required for adultery is the same identical thing as that required for rape. It is not necessary that there should be direct evidence of adulterer knowing whose wife the woman is, provided he knew she was a married woman[2]. Direct evidence of adultery is seldom available[3].

Charge of rape—conviction for adultery, if legal.—If the husband is not the complainant there can be no conviction for adultery. In this connection, I like to quote the following lines from the judgment of Glover J., in the case *Queen* v. *Luckhy Narain Nagory*[4]. His lordship observed, "I doubt if formal assent of the husband to a charge of adultery, added at the end of his deposition, is a proper compliance with Sec. 199, Code of Criminal Procedure, which says that a complaint under Sec. 497 Penal Code shall not be instituted except by the husband of the woman"[5].

1. *Danesh Sheikh* v. *Tafir Mandal*, 7 C. W. N. 143.
2. *Queen Empress* v. *Madhub Chunder Giri Mohunt*, 21 W. R. 13.
3. *Sita Debi*, 9 P. L. T. 397.
4. *Emperor of India* v. *Kallu*, 5 All. 233=3 A. W. N. (1883) 1= 7. Ind. Jur. 543.
5. *In re Narayan Pasi*, 24 W. R. 18.

In the case of *Chemon Garo* v. *Emperor*, it was *held* that where the husband appeared as a witness in the prosecution of the offence of rape it cannot be regarded as amounting to the institution of a complaint by the husband for adultery[1].

Essentials of a valid Mohammadan marriage.—There must be a *Mollah* or priest and two witnesses and some one must act as *Vakil* for the bride. Besides, it is essential for a valid marriage according to the Mohomedan law that the husband should be capable of giving a valid consent, or should be represented by some one who can lawfully consent on his behalf, and the girl also when a minor, should be represented by a duly authorised person for the purpose of binding her[2].

No. 82. (Sec. 498—Enticing etc., a married woman.)

NOTES.

Is evidence of the complainant and the woman sufficient to prove marriage?—Where a charge is made under Section 498 of the I. P. C., of enticing away a married woman, the Court should require some better evidence of the marriage than the mere statements of the complainant and the woman[3]. The legality of the marriage is most material[4].

Presumption of marriage from cohabitation.—There arises a presumption of marriage from cohabitation

1. 29 Cal. 415. *Vide* however, *Jatra Sheik* v. *Reazat Sheik*, 20 Cal. 483.
2. *Sobrati* v. *Jungli*, 2 C. W. N. 245.
3. *Queen Emp.* v. *Dal Singh*, 20 All. 166.
4. *Q. E.* v. *Subbarayan*, 9 Mad. 9.

for a long period but the accused cannot be convicted on mere presumption of this kind[1].

Proof in a case under Section 498 I. P. C.—It must be proved that the accused enticed away the complainant's wife with the intention mentioned in Section 498[2].

Can the wife be punished as an abettor?—Where a man has been convicted of enticing away a woman, under Section 498 of the Indian Penal Code, the woman who was enticed away cannot be punished as an abettor[3].

Seduction.—This is punishable under Section 498 of the Penal Code, provided the seducer knew, or had reason to know that the woman was the wife of the man, from whose house he took her away[4].

No. 83. (Section 500 I. P. C.—Punishment for defamation.)

NOTES.

Defamation has been defined in Section 499 I. P. C. There are ten exceptions in the said section; if the case falls within any one of the exceptions there is no offence.

Exceptions:

1. Imputation of truth which public good requires to be made or published.

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1. *Vir Singh* v. *Emp.*, 30 Punj. L. R. 643=119 I. C. 332= 30 Cr. L. J. 1051.
2. *Jasimaddin Sheikh* v. *I Chohak Mistri*, 1 C. W. N. 498.
3. *In re Balambal*, 26 Mad. 463=1 Weir 574.
4. *Mutty Khan* v. *Mungloo Khansama*, 5 W. R. 50.

2. Comments on the public conduct of public servants.
3. Comments on the conduct of any person touching any public question.
4. Publication of reports of proceedings of Courts.
5. Comments on the merits of cases decided in Court or conduct of witnesses and others concerned.
6. Comments on the merits of public performance.
7. Censure passed in good faith by person having lawful authority over another.
8. Accusation preferred in good faith to authorized person.
9. Imputation made in good faith by person for protection of his or other's interests.
10. Caution intended for good of person or for public good.

Cases of defamation.—

(1) Imputation of insolvency against a trader[1];
(2) Calling a person discharged bankrupt in an affidafit[2];
(3) Falsely reporting that a person was excommunicated[3] etc.

Burden of proof**:** ***Exceptions.*****—A** party relying on

1. *Bhikachand* v. *Emp.*, 98 I. C. 124 = A. I. R. 1927 Sind. 54.
2. *Tikamchand Mulchand* v. *Emp.*, 27 Cr. L. J. 947 = A. I. R. 1927 Sind. 58.
3. *Yusuf Beg Sahib* v. *Mahamed Sayad Sahib*, 99 I. C. 943 = A. I. R. 1927 Mad. 397.

the exceptions to Sec. 499 I. P. C., must prove the same[1].

Privileged occasion.—Where a person called upon, by a "*Panchayet*" convened by the complainant's relatives, to explain why he had made a defamatory remark concerning the complainant, made a statement by way of explanation, *held* that such statement being privileged, a conviction for defamation for making such a statement was illegal[2].

Cross-examination by pleader—defamation—good faith—presumption—A pleader must use a certain amount of common sense and caution in asking a defamatory question in cross-examination. Where the character of the witness is known, the pleader will not be justified in asking questions recklessly without caring to enquire if there is any truth in them[3]. A pleader is entitled to the presumption that the questions he asks in cross-examination are asked in good faith for the protection of the interest of his client. To rebut this presumption there must be convincing evidence that the pleader was actuated by an improper motive, personal to himself, and not by a desire to further the interest of his client in the case[4].

1. *Muhammad Gul* v. *Hazi Fazley*, 56 Cal. 1013=33 C. W. N. 446=A. I. R. 1929 Cal. 346.
2. In the matter of *Govindappa Nayak and Antoni*, 7 Mad. 36.
3. *Fakir Prasad Ghose* v *Kripa Sindhu Pal Bhuti*, 54 Cal. 137=101 I. C. 600=28 Cr. L. J. 472=A. I. R. 1927 Cal. 303.
4. *Nikunja Behary Sen* v. *Harendra Chandra Sinha*, 18 C. W. N. 424.

Essence of the offence.—The essence of the offence of defamation is the publication of an imputation with the knowledge that it will or may harm the reputation of the person defamed[1].

Is it necessary to prove the exact words used in oral defamation?—It is unnecessary to prove the exact words used by the accused for the purpose of supporting a conviction for oral defamation. It is sufficient to prove the purport or substance of the defamatory imputations[2].

Making and publication.—The prosecution must prove the fact of making and publishing matter alleged to be defamatory[3].

The act of filing in Court, a petition containing imputations concerning a person calculated to harm his reputation, with the intention that it may be read by other persons, amounts to making and publishing the imputation[4].

What is good-faith?—Good faith as contemplated by the 9th exception to Sec. 499 of the Indian Penal Code is a relative thing, varying with the intelligence and reasoning powers of the accused as also the circumstances of the case; all these must be taken into consideration in determining whether in a particular case due care and caution was taken[5]. If good faith be not established it is not strictly necessary to

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1. *Wahid Ullah Ahrari* v. *Emp.*, 155 I. C. 638.
2. *Bhola Nath* v. *Emp.*, 51 All. 313 = A. I. R. 1929 All 1.
3. *Mohideen Abdul Kadir* v. *Emp.*, 27 Mad. 238 = 2 Weir. 408.
4. *Dr. F. A. Greene* v. *Mr. F. P. Delanney*, 14 W. R. 27.
5. *Yad Ali* v. *Gaya Singh*, 34 C. W. N. 1070.

consider whether public good was involved[1]. The definition of 'good faith' in Sec. 52 of the Indian Penal Code does away with the presumption that the accused acted *bonafide* until the contrary is proved and the accused has to show that he made the imputation not without due care and circumspection[2].

Who can complain?—Ordinarily the person defamed should be the complainant. It was *held* by a Full-Bench of the Bombay Court that under the provisions of the Criminal Procedure Code, a husband is entitled to be the complainant where the alleged offence is defamation imputing unchastity to his wife[3]. This view was adopted by the Madras High Court[4]. Where the alleged offence was defamation imputing unchastity to a Hindu widow, *held* that her brother, with whom she was residing at the time, was "a person aggrieved" by such imputation within the terms of Section 198 of the Criminal Procedure Code[5].

Defamation of Corporate Body—prosecution.—A Corporation cannot start a prosecution for words which merely affects its honour or dignity. It cannot maintain a prosecution for words which reflect, not upon

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1. *Emp.* v. *Purna Chandra Ghose*, 28 C. W. N. 579.
2. *Muhammad Gul* v. *Hazi Fazley*, 33 C. W. N. 446.
3. *Chhota Lal Lallubhai* v. *Nathabhai Bechar*, 25 Bom. 151= 2 Bom. L. R. 665.
4. *Chellam Naidu* v. *Ramasami*, 14 Mad. 379=1 M. L. J. 242= 2 Weir, 230.
5. *Thakur Das Sur* v. *Adhar Chandra Missri*, 32 Cal. 425= 8 C. W. N. 515.

its members individually, unless special damage has thereby been caused to it[1]

Cross-examination : how to be conducted—where "good faith" is pleaded.—The Cross-examination should be directed towards every matter upon which evidence is intended to be adduced. If this is not done, accused may not be subsequently allowed to adduce evidence regarding matters on which he did not cross-examine[2]

Intention—injury to reputation, if necessary—A person commits defamation within the meaning of Sec. 499 I. P. C., who publishes any imputation to that person whether harm is actually caused or not[3]. But it is essential that the person who makes or publishes the imputation complained of should intend to harm, or know or have reason to believe that the imputation will harm the reputation of the person concerning whom it is made or published[4].

Plea of "fair comment"—when not available.—It is impossible to justify allegations of defamation on the ground of fair comment, the moment it is shown that the allegation is based upon a misstatement of facts[5].

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1. *Maung Chit Tay* v *Maung Tyn Nyun*, 13 Rang 297=A. I. R. 1935 Rang 108.=156 I C 441.=36 Cr. L. J 953.
2. *Queen Empress* v. *Dhum Singh*, 6 All. 220=4. A. W. N. (1884) 53.
3. *Ram Narayan* v. *Emp*, 22 A. L J. 689=83 I. C. 303=A. I. R. 1924 All. 566.
4. *Debi Dial* v. *Emp.*, 4 Lah. 55=24 Cr. L. J. 698=A. I. R. 1923 Lah. 225.
5. *Bhagwan Das* v. *Emp.*, 98 I. C. 481=A. I. R. 1927 All. 116.

Defamatory statement in pleadings and petitions.—A defamatory statement made in the pleading in an action is not absolutely privileged. The only privilege in a criminal proceeding is that provided by the *Exceptions* to Sec. 499 I. P. C[1].

In determining whether "due care" was taken allowance should be made for the intelligence of the accused, his capacity to reason, the circumstances which necessitated his making the imputation in a petition filed in Court[2].

Witness—privilege.—A witness has not absolute privilege as regards the statements made by him but has only a qualified privilege under the 1st or 9th *Exception* to Sec. 499 I. P. C[3]. It is for accused to show that the statement made by him as a witness falls within one or other of the *Exceptions* to Sec. 499 I. P. C., or that he was protected from prosecution by the *proviso* to Sec. 132 of the Indian Evidence Act[4].

Report to police—privilege.—A report made at a police-station, though not within the rule of absolute privilege which covers judicial proceedings, is *prima facie* privileged, that is to say, the person making it has a right to make it if he honestly believes it to be true and the person receiving it has a duty to receive it[5].

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1. *Angada Ram Shaha and another* v. *Nemai Chand Shaha*, 23 Cal. 867.
2. *Yadalj* v. *Emp.*, A. I. R. 1929 Cal. 779.
3. *Peddaba Reddi* v. *Varada Reddi*, 52 Mad. 432=116 I. C. 337=30 Cr. L. J. 613=56 M. L. J. 570.
4. *Emp.* v. *Ganga Prasad*, I. L. R. 29 All. 685 (1907).
5. *Lala Lachman & another* v. *Majyu*, A. I. R. 1923 All. 167.

Civil and criminal liability for defamatory statement contained in a petition filed in Court.—This matter was decided by the Calcutta High Court in the Special Bench case viz., *Satish Chandra Chakravorty* v. *Ram Dayal De*[1]. Mukherjee, J., while delivering judgment observed as follows :—"If a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of Sec. 499 I. P. C.; the question must be solved by the application of the provisions of the Indian Penal Code and not otherwise. The Court cannot engraft thereupon, exceptions derived from the Common Law of England or based on grounds of public policy. Consequently, a person in such a position is entitled only to the benefit of the qualified privilege mentioned in Sec. 499 I. P. C.

If a party, to a judicial proceeding is sued in a Civil Court for damages for defamation in respect of a statement made therein on oath or otherwise, his liability, in the absence of Statutory Rules applicable to the subject, must be determined with reference to the principles of justice, equity and good conscience. There is a large preponderance of judicial opinion in favour of the view that the principles of justice, equity and good conscience applicable to such circumstances should be identical with the corresponding relevant rules of the Common Law of England. A small minority favours the view that the principles of justice,

1. *Satish Chandra Chakravarty* v. *Ram Dayal De*, 24 C. W. N. 982.

equity and good conscience should be identical with the rules embodied in the Indian Penal Code.

No 84. (Sec. 504 I. P. C.—Intentional insult with intent to provoke breach of the peace.)

NOTES.

When punishable.—The insults, however deliberate and intentional, are only punishable as offences when they are intended to provoke a breach of the peace or an affray (Sec. 159 I. P. C) The Court must be satisfied with not merely that there has been intentional insult and provocation. but also that the offender gave the provocation intending or knowing it to be likely that it would cause a breach of the peace[1].

A abused B to such an extent as to reduce B to a state of abject terror. *Held* that A, having given to B such provocation as would, under ordinary circumstances, have caused a breach of the peace, was guilty of an offence under Section 504 of the Penal Code[2].

Ingredients of the offence.—The ingredients essential for a conviction under Sec. 504 are threefold, *first* intentional insult, *secondly* provocation therefrom, and *thirdly* intention that such provocation should cause or knowledge that such provocation was likely to cause the person so insulted to break the public peace or to commit any other offence[3].

1. Morgan and Macpherson 450.
2. *Queen Empress* v. *Jogayya*, 10 Mad. 353=1 Weir 620.
3. *Jaykrishna Samanta* v. *King Emp.*, 21 C. W. N. 95.

No. 85. (Sec. 511 I. P. C.—Punishment for attempting to commit offences punishable with transportation or imprisonment.)

NOTES

A makes an attempt to pick the pocket of Z by thrusting his hands into Z's pocket A fails in the attempt in consequence of Z's having nothing in his pocket. A is gulity under this section. (Sec. 511 Illustration.)

Difference between "Intent" and "attempt."—An intent to commit an offence punishable with imprisonment is not the same thing as an attempt to commit such an offence. *Intent* exists before the *attempt* begins. A mere *intent* is not by itself an offence.

Difference between "attempt" and "preparation".—There is a wide difference between "preparation" and an "attempt" to commit an offence. The preparation consists in devising or arranging means necessary for the commission of an offence while an attempt is the direct movement towards the commission after the preparations are made[1].

Application of the section.—Section 511 of the Indian Penal Code was not only meant to cover the penultimate act towards the completion of an offence but also acts precedent, if those acts are done in the course of the attempt to commit the offence, or done with the intent to commit it and done towards its commission. Whether any given act amounts to an attempt of which

1. *Lakshmi Prasad* v. *Emperor*, 65 I. C. 492=A. I. R. 1923. Pat. 307.

the law will take notice, or merely the preparation is a question of fact in each case[1]. A person cannot be convicted of an attempt to commit an offence under Sec. 511 of the Indian Penal Code, unless the offence would have been committed if the attempt charged had succeeded[2]. Section 511 of the Penal Code does not apply in a case of dacoity[3].

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1. In the matter of the petition of *R. MacCrea*, 15 All. 173=13 A. W. N. (1893) 71.
2. *Emp.* v. *Riasat Ali alias Babu Mirja alias Bodinxxuma*, 7 Cal. 352=4 Shome L. R. 155=8 C. L. R. 572.
3. *Queen* v. *Koonee*, 7 W. R. 48.

PART IV.

SOME IMPORTANT ACTS

WITH NOTES.

(*For Constant Reference*).

1. The Contempt of Courts Act, (Act XII of 1926).
2. The Cattle Trespass Act, (Act I of 1871).
3. The Indian Arms Act, (Act XI of 1878).
4. The Indian Motor Vehicles Act, (Act VIII of 1914).
5. The Whipping Act, (Act IV of 1909).
6. The Indian Explosives Act, (Act IV of 1884).
7. The Prevention of Cruelty to Animals Act, (Act XI of 1890).
8. The Public Gambling Act, (Act III of 1867).
9. The Opium Act, (Act I of 1878).
10. The Reformatory Schools Act, (Act VIII of 1897).

Notes on some important Acts.

1. The Explosive Substance Act, (Act VI of 1908).
2. The Press and Registration of Books Act, (Act XXV of 1867).
3. The Factories Act, (Act XII of 1911).

PART IV

CHAPTER I.

THE CONTEMPT OF COURTS ACT.

(Act XII of 1926)

(An act to define and limit the powers of certain Courts in punishing contempt of Courts.)

Whereas doubts have arisen as to the powers of a High Court of Judicature to punish contempts of subordinate Courts,—

And whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of Court,—

It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called the Contempt of Courts Act, 1926.

(2) It shall extend to whole of British India.

(3) It shall come into force on such date as the Governor-General-in-Council may, by notification in the Gazette of India, appoint.

NOTES.

The jurisdiction of Superior Courts of Record in England as well as in India to punish by summary procedure, contempts by scandalising the Court itself or a Judge as a Judge, still exists,—though the con-

tempt may be committed in *facie curia* or in relation to a pending case or a case just decided. Indeed, such contempts undermine public confidence in and respect for the Court and thus interferes with due administration of justice generally and also in cases yet to be heard. These cases pre-eminently require the adoption of the summary procedure rather than the alternative procedure of indictment and trial which is too delatory and too inconvenient. A contempt may have no relation to a case pending or decided, and may be constituted by allegations of things done by Judges out of Court, detracting from their judicial competence or character. Imputation to the Judges, of amenability to outside control in their judicial work and an improper bias in favour of the executive, constitutes not merely a technical contempt, but a gross contempt of the class that has been described as contempt by scandalising the court and being such a contempt, requires to be dealt with speedily by the summary procedure[1].

Powers of Superior Courts to punish contempts of Courts.

2. (1) Subject to the provisions of sub-section (3), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice in respect of contempts of

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1. In the matter of *Tushar Kanti Ghose*, the Editor, and in the matter of *Tarit Kanti Biswas, the Printer and Publisher of the Amrita Bazar Patrika*, 39 C. W. N. 770. Read the case of *Surendra Nath Banerjee*, 10 Cal. 109 (P. C.).

Courts subordinate to them as they have and exercise in respect of contempts of themselves.

(2) Subject to the provisions of sub-section (3), a Chief Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice in respect of contempt of itself as a High Court referred to in sub-section (1).

(3) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

NOTES.

Under Section 2, (3) of the Contempt of Courts Act only those contempts which are punishable by the Penal Code as contempts of Courts are excluded from the jurisdiction of the High Court, but contempts which are punishable as ordinary offences are not.

Re : Receiver :—Where a party applies for committal of certain persons to jail for contempt of Court for interfering with or obstructing a Receiver appointed by the High Court, he must prove two facts :—(1) that the respondents were aware of the appointment of the Receiver, (2) that to their knowledge the Receiver had taken possession of the particular property, with which the respondents had attempted to interfere[1].

Defamatory statement.—A defamatory statement against the Presiding Officer of a Court would be a criminal offence under the Indian Penal Code

1. *Kilachand Devchand* v. *Ajudhia Prosad*, 59 Bom. 10=A. I. R. 1934 Bom. 452.

and the officer concerned has a remedy by way of filing a complaint. Therefore cognizance of such an offence should not be taken under the Contempt of Courts Act[1].

Procedure.—When after the appointment of a Receiver at the instance of the plaintiff, the former's possession is obstructed, the proper procedure is that the plaintiff rather than the Receiver should move the Court and when the Receiver is the plaintiff himself, he should move in the capacity of a plaintiff[2].

Right of criticism in good faith.—Whether the authority and position of an individual Judge or the due administration of justice is concerned, every member of the public (as also the Press) has the right of criticising in *good faith*, in private or public, the public acts done in the seat of Justice, provided he does not impute improper motives and does not act in malice or attempt to impair the administration of Justice[3]. An article in a newspaper containing allegations to the effect that Justice was being administered in the High Court arbitrarily and in a summary manner without regard to the facts of the case or the law involved therein, is

1. *Ziaul Hassan* v. *'Aziz Ahmed*, 1935. A. L. J. 810=156 I. C. 542=A. I. R. 1935 All. 896=36 Cr. L. J. 967.
2. *Narayan Chandra Chatterjee* v. *Panchu Paramanik*, 40 C.W.N. 413.
3. *Andre Paul Terence Ambard* v. *The Attorney General of Trinidad and Tobago*, 40 C. W. N. 801 P. C.

calculated to bring the Court into contempt and to lower its authority in the eye of the general public[1].

Truth of allegations.—Anything said or written about the Court, which may have the effect of lowering the prestige of the Court or of bringing it into contempt, amounts to contempt of Court. Accused is not entitled to produce evidence to establish the truth of his allegations[2].

Contempt of Court for deliberately withholding documents.—When an application is made to commit a person for contempt of Court on the ground of his deliberately withholding documents which he has been ordered by the Court to produce, the applicant must prove, in order to establish the charge of contempt, that the documents are in the possession of the person charged, and have been deliberately withheld by him. Mere suspicion, although very deep, is not sufficient to establish a charge of contempt of Court[3].

High Court's jurisdiction to commit for contempt of inferior Magistrate's Court in mofussil.—The Calcutta High Court *observed* in the matter of *Amrita Bazar Patrika*[4] that neither the Supreme Court nor the *Sadar Dewani Adalat* nor the *Sadar Nizamat Adalat* had jurisdiction to commit a person for contempt of

1. *In re. S. R. Iyer & another*, 16 Lah. 266=37 P.L.R. 73=A.I.R. 1935 Lah. 212=155 I. C. 695=1935 Cr. C. 383=36 Cr. L. J. 837.
2. In the matter of, *an Advocate of Allahabad* 1935 A. L. J. 46= A. I. R. 1935 All. 38=155 I. C. 33=36 Cr. L. J. 620.
3. *Sitaram Khemka* v. *Arthur Charsley Thomas*, A. I. R. 1936 Cal. 132.
4. 17 C. W. N. 1253.

a Criminal Court in the mofussil. The Calcutta High Court, has inherited all jurisdictions and every power and authority in any manner vested in the Supreme Court, but the *Sadar Dewani Adalat* and the *Sadar Nizamat Adalat* did not derive any such jurisdiction. But a contrary view was taken by the Bombay and Allahabad High Courts[1]. Section 2 of the Contempt of Courts Act has adopted the views of the Bombay and Allahabad High Courts.

Subordinate Court cannot punish for contempt under its inherent power.—A Munsiff called upon plaintiff to produce documents. The plaintiff disobeyed the order and was fined for contempt of Court. The order was held to be without jurisdiction as Section 151 C. P. C., does not give the Court an absolute discretion to make any order it pleases. The Court cannot assume a summary jurisdiction and punish a person for contempt[2].

Contempt of Court.—Appeal to Privy Council.—It is competent for the Privy Council to give leave to appeal and to entertain appeals from orders of the Courts overseas imposing penalties for contempt of Court.

Limit of punishment for contempt of Court.

3. Save as otherwise expressly provided by any law for the time being in force, a contempt of Court may be punished with simple imprisonment for a term which may

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1. In re: *Balkrishna Govind Kulkarni*, (1921) 24 Bom. L. R. 16=46 Bom. 592. In re: *Abdul Hassan Jauhar*, (1926) 48 All. 711.
2. *Chagmal Seraogi v. K. Emp.*, 23 C. W. N. 389.

extend to six months, or with fine, which may extend to thousand rupees, or with both :

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

CHAPTER II.

THE CATTLE-TRESPASS ACT.

(Act I of 1871)

As Modified up to the 1st December, 1935.

CONTENTS.

Sections

Act No. I of 1871[1].

An Act to consolidate and amend the law relating to Trespasses by Cattle

[13th January, 1871.]

Preamble

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle; It is hereby enacted as follows.—

I. Preliminary.

Title and extent.

1[2]. *(1)* This Act may be called the Cattle-trespass Act, 1871 ; and

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1 For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt V. p 310 ; for Proceedings in Council, *see ibid*, Supplement, pp. 1150, 1200, 1290, and Supplement, 1871, p. 178.

2. This section was substituted by s. 1 of the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891).

(2) It extends to the whole[1] of British India except the Presidency towns and such local areas as the Local Government, by notification in the official Gazette, may from time to time exclude from its operation.

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1. This Act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. 1, Bur. Code; in the Hill District of Arakan by the Arakan Hill District Laws Regulation 1916 (1 of 1916), s. 2, *ibid*; in British Baluchistan, by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code; in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, B. and O. Code; and in Angul and the Khondmals, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 *ibid*; in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929). It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum (Gazette of India, 1881, Pt. I, p. 504; the District of Lohardaga included at this time the present District of Palamau, which was separated in 1894, the District of Lohardaga, is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44); and the North-Western Provinces (since included within the United Provinces of Agra and Oudh), Tarai; Gazette of India, 1876, Pt. I, p. 505; the Scheduled Districts in Ganjam and Vizagapatam, *ibid*, 1899, Pt. I, p. 720.

It has been extended by notification under s. 16 of the Burma Laws Act, 1898 (13 of 1898), to the Civil Station of Lashio in the State of North Hsenwi, Burma Gazette, 1898, Pt. I, P. 584.

It has been extended to the Civil Station of Taunggyi in the State of Yawng Hwe, *ibid*, 1895, Pt. I, p. 550.

(3) [1]* * * * *

Repeal of Acts.

2. The Acts mentioned in the schedule hereto annexed are repealed.

Reference to repealed Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed and villages determined under Act[2] No. III of 1857 (*relating to trespasses by cattle*), shall be deemed to be respectively established, appointed and determined under this Act.

Interpretation-clause.

3. In this Act :—"Officer of police" includes also village watchman, and "cattle" includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids, [and[3]

"local authority" means any body of person for the time being invested by law with the control and administration of any matters within a specified local area, and

"local fund" means any fund under the control or management of a local authority].

1. Sub-section (3) was repealed by s. 3 and Second Schedule of the Repealing and Amending Act, 1914 (10 of 1914).

2. Act 3 of 1857 is repealed by this Act—*see* Schedule.

3. These words were added by s. 2 of the Cattle Trespass Act (1871) Amendment Act, 1891 (I of 1891).

II. Pounds and Pound-keepers.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.

Establishment of pounds.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time, alter the rates of charge for feeding and watering impounded cattle.

Control of pounds. Rates of charge for feeding impounded cattle.

Appointment of pound-keepers.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper:

Provided that, in the Presidency of Fort St. George, the heads of villages and, in the Presidency of Bombay, the Police patils or (where there are no police patils) the heads of villages, shall be *ex-officio* the keepers of village-pounds.

Ex-officio pound-keepers in Madras and Bombay.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Suspension or removal of pound-keepers.

Pound-keepers may hold other offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers to be public servants.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code (Act. XLV of 1860)

Duties of pound-keepers.

To keep registers and furnish returns.

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.

To register seizures.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register—

(*a*) the number and description of the animals,

(*b*) the day and hour on and at which they were so brought,

(*c*) the name and residence of the seizer, and

(*d*) the name and residence of the owner, if known, and shall give, the seizer or his agent, a copy of the entry.

To take charge of and feed cattle.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

III. Impounding Cattle.

Cattle damaging land.

10. The cultivator or occupier of any land, or any person who has advanced cash, for the cultivation of the crop or produce on any land, or the vendee or mortgagee of such crop or produce, or any part thereof, may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and [send them or cause

them to be sent within twenty-four hours][1] to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing (*a*) resistance to such seizures, and (*b*) rescues from persons making such seizures.

Police to aid seizures.

NOTES.

Onus.—The onus is on the complainant to satisfy the Court that he was a person entitled to seize the cattle or cause it to be seized[2].

Right to capture—how long subsists.—Right to seize cattle ordinarily subsists until the cattle leave the land[3]. But the owner of the land will be within his rights in capturing them before they have definitely made their escape, even though they are not actually on the land when captured[4].

Right to detain.—Where the accused kept a cow over-night in his custody, for damage done, for the purpose of impounding unless he received compensation. *Held,* he was legally entitled to keep it in his own custody for 24 hours before lodging it in the pound[5].

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1. These words were substituted for the words "take them or cause them to be taken without unnecessary delay" by s. 3 of the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891).
2. *Manik Chandra Roy* v. *Ismail*, 23 C. W. N. 387.
3. *Bhagwantrao* v. *Champat Rao*, 25 Cr. L. J. 1004=A. I. R. 1925 Nag. 50.
4. *Jagannath Sing* v. *E.*, 31 N. L. R. 139=A. I. R. 1934 All. 258.
5. *Ramratan* v. *Emperor*, 23 Cr. L. J. 511=A. I. R. 1923 Nag. 64, (2). See 14 C. W. N. 238.

Cattle damaging public roads, canals and embankments.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage works, embankments and the like, and officers of police may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes of such roads, canals, drainage-works, or embankments, or found straying thereon,

and shall (send them or cause them to be sent within twenty-four hours)[1] to the nearest pound.

NOTES.

Public road.—Forest.—A person, who through neglect, permits a public road to be damaged by allowing his pigs to trespass thereon is liable to be convicted[2].

Cattle straying in a reserved forest may be seized by Forest-officer[3]. The Act authorises person-in-charge of public roads to seize cattle doing damage to or straying on public roads. Grazing cattle across a railway line where there is no fence, is no offence[4].

Fines for cattle impounded.

12[5]. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine in accordance with the scale for the time being prescribed by the Local

1. These words were substituted for the words "take them without unnecessary delay" by s. 4 of the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891).

2. *Reg.* v. *Lingana Bin Ginbana*, 4 Bom. H. C. R. 14.

3. *Officer, Queen Emp.* v. *Babaji Laxman*, 22 Bom. 933.

4. A. I. R. (1930) Oudh. 250=7 O. W. N. 461=(1930) Cr. C. 570=126 I. C. 497=31 Cr. L. J. 1015.

5. This section was substituted by s. 2 of the Cattle-trespass (Amendment) Act, 1921 (17 of 1921).

Government in this behalf by notification in the Official Gazette. Different scales may be prescribed for different local areas.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government may direct.

A list of the fines and of the rates of charge for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound.

IV. Delivery or Sale of Cattle.

Procedure when owner claims the cattle and pays fines and charges.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

Procedure if cattle be not claimed within a week.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer-in-charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

(*a*) the number and description of the cattle,

(*b*) the place where they were seized,

(*c*) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs :

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

Delivery to owner disputing legality of seizure, but making deposit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under Section 20, then upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Procedure when owner refuses or omits to pay the fines and expenses.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in Section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time and subject to such conditions, as are referred to in Section 14.

Deduction of fines and expenses.

The fines leviable and the expenses of feeding and watering together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of unsold cattle and balance of proceeds.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

(a) the number of cattle seized,

(b) the time during which they have been impounded,

(c) the amount of fines and charges incurred,

(d) the number of cattle sold,

(e) the proceeds of sale, and

(f) the manner in which those proceeds have been disposed of.

Receipt.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of fines, expenses and surplus proceeds of sale.

17. The officer by whom the sale was made shall send to the Magistrate of the District, the fines so deducted.

The charges for feeding and watering deducted under Section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under Section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District,

who shall hold them in deposit for three months, and if no claim thereto be preferred and established within that period shall, at its expiry, dispose of them as hereinafter provided.

Application of fines and unclaimed proceeds of sales.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid—

(*a*) the salaries allowed to pound-keepers under the orders of the Local Government;

(*b*) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus (if any) shall be applied, under orders of the Local Government, to the construction and repair of roads and bridges and to other purposes of public utility.

Officers and pound-keepers not to purchase cattle at sales under Act.

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

V. *Complaints of Illegal Seizure or Detention*[1].

Power to make complaints.

20. Any person whose cattle have been seized under this Act, or having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

NOTES

Jurisdiction.—It is necessary for a Magistrate who is generally empowered under the Cr P. C., to receive complaints of offences, to be specially authorised by the District Magistrate to receive complaints under the Cattle Trespass Act[2].

Summary Trial.—Cases under the Cattle Trespass Act cannot be summarily tried[3].

Compensation to accused.—In case of frivolous and vexatious complaint no compensation can be awarded to the accused[4]. (*See Section* 22).

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1. This Chapter was substituted by s. 6 of the Cattle trespass Act (1871) Amendment Act, 1891 (I of 1891.)
2. *Deenadayalu Naidu* v. *Ratna Padayachi*, 50 Mad. 811=25 L. W. 282=100 I. C. 381 (2)=28 Cr L J. 301 (2)= A.I. R. 1927 Mad. 396= 1927) M W N 167=52 M L. J. 251.
3. *Nedaram Thakur* v *Joonab*, 23 Cal. 248. Also read—*Pitchi* v. *Ankappa*, 9 Mad 102 and *Kottalanada* v. *Muthaya*, 9 Mad. 374.
4. *Meghai* v. *Sheobhik*, 16 A W. N. (1896) 98=18 All. 353 Also see *Pitchi* v. *Ankappa*, 9 Mad 102, *Kottalanada* v. *Muthaya*, 9 Mad. 374, *Kalachand* v. *Guladhur Biswas*, 13 Cal. 304, and *Nedaram Thakur* v. *Joonab*, 23 Cal. 248.

Transfer of case.—A District Magistrate cannot transfer to *any Magistrate*, cases under Sec. 20 of the Cattle Trespass Act (I of 1871), which are triable only by the *two clases of Magistrates specified in that section*[1].

Procedure on complaint.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an inquiry into the case.

Compensation for illegal seizure or detention.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle ;

Release of Cattle.

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

1. *Raghu Singh* v. *Abdul Wahab*, 23 Cal. 442.

NOTES.

Compensation.—The illegal seizing of cattle under Section 22 of the Cattle Trespass Act, is not a criminal offence. The law allows certain Magistrates to adjudicate compensation to a party injured by an illegal seizing; court-fees paid by the complainant may form part of such compensation. It is not lawful to pass sentence of fine or of imprisonment in default of payment of the compensation awarded in a matter under Section 21 of Cattle Trespass Act. (I of 1871)[1].

Compensation may be awarded only to the owner of the cattle and not to his agent filing complaint[2]. A grazier of cattle is an agent of the owner within the meaning of Section 22[3].

Where Section 22 has no application.—An accused was found to have loosed the complainant's cattle at night from a cattle-den, and to have driven them to the pound. He was convicted and was ordered to pay compensation to the complainant. *Held*, that Section 22 was inapplicable to the facts of the case[4].

If no compensation claimed.—If no compensation was claimed in the petition of complaint, the order directing payment of compensation cannot stand[5]. A contrary view has been taken by the Madras High

1. In re *Ketabdi Mundul*, 2 C. L. R. 507.
2. & 3. *Manohar* v. *Ramdularey*, 116 I. C. 424=30 Cr. L. J. 633=1929 Cr. C. 18=A. I. R. 1929 Nag. 152.
4. *Paryag Rai* v. *Arju Mian*, 22 Cal. 139.
5. *Baijnath Sahay* v. *Emperor*, 4 Pat. L. T. 231=1 Pat. L. R. 34 (Cr.)=1923 P. H. C. C. 96=72 I. C. 71=24 Cr. L. J. 311=A. I. R. 1923 P. 292.

Court[1]. A Magistrate is not competent under Section 22 of the Cattle Trespass Act, to pass a sentence of fine ; he can only award compensation for the illegal seizure of cattle[2].

If compensation is not paid—can a Magistrate pass a sentence of imprisonment ?—A Magistrate is not competent to pass a sentence of imprisonment under Sec. 22, Cattle Trespass Act ;—a sentence of imprisonment in default of payment of compensation is illegal[3].

Appeal.—According to the Madras High Court, a person against whom an order under Section 22 of the Cattle Trespass Act, is made, is a "person convicted on a trial" and is entitled to appeal under Section 407 of the Code of Criminal Procedure[4].

The Bombay and Calcutta High Courts have taken a contrary view[5].

Recovery of compensation.

23. The compensation, fines and expenses mentioned in Section 22 may be recovered as if they were fines imposed by the Magistrate.

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1. *Kolandai* v. *Perumal,* A. I. R. 1928 Mad. 369 (A I. R. 1923 Pat. 292 not followed.)
2. *Bhagirathi Naik* v. *Gangadhar Mahanty,* 27 Cal. 992.
3. A. I. R. (1930) Nag. 149=121 I. C. 665=31 Cr. L. J. 278=(1930) Cr. C. 505=Ind. Rul. (1930) Nag. 121.
4. In the matter of *Ponnusami,* 29 Mad. 517.
5. *Queen Empress* v. *Rayalakhma,* 10 Bom. 230. *Dhiku* v. *Deno Nath Deb alias Dinu,* 15 Cal. 712 also read *In re Ganesh Pershad,* 3 C. W. N. 200 & *Q. E.* v. *Raya Lakhma,* 10 Bom. 230.

VI. Penalties.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

24. Whoever forcibly opposes the seizure of cattle to be seized under this Act, and whoever rescues the same after seizure, either from a pound or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees or with both

NOTES.

Rescuing cattle.—A buffallo belonging to the accused, was impounded but was rescued by him after opening a door of the pound. The accused was convicted for offence under Section 24 of the Cattle Trespass Act[1]. Driving cattle by shouts and cries does constitute rescuing them under Section 24[2]. Accused was convicted for rescuing cattle after seizure for trespassing on public property. The judgment contained no finding to the effect that the land was public property. The conviction was set aside[3].

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1. *Lakshmana Goundan* v. *Emp* 38 M. L. T. (H. C.) 163=100 I. C. 120=28 Cr. L. J. 248-7 A. I. C .R. 410=A. I. R. 1927 Mad. 343=52 M L. J 143.
2. *In re Kamai Kondiah*, 17 L. W. 546=32 M. L. T. 365=24 Cr. L. J. 456, (1923) M. W. N. 437=72 I. C. 616=A. I. R. 1923 Mad. 608.
3. *Queen Emp.* v. *Lakshmanna*, 24 Mad. 318.

Lawful seizure—*Onus*—No conviction can be had under Section 24 of the Cattle Trespass Act unless it is proved that the cattle rescued was lawfully seized within the meaning of the provisions of the Act. The *onus* is on the complainant to satisfy the Court that he was a person entitled to seize the cattle or cause it to be seized under Section 10[1].

Recovery of penalty for mischief committed by causing cattle to trespass

25 Any fine imposed [under the next following section or][2] for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they were the property of the person convicted of the offence, or were only in his charge when the trespass was committed

Penalty for damage caused to land or crops or public roads by pigs

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

[The Local Government, by notification in the Official Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read

1. *Manik Chandra Roy* v. *Ismail*, 23 C. W. N 387.

2. These words were inserted by S 7 of the Cattle Trespass Act (1871) Amendment Act, 1891 (1 of 1891)

as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees" or as if there were both such reference and such substitution][1].

[2]* * * * *

Penalty on pound keeper failing to perform duties.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of Section 19 or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

Application of fines recovered under section 25, 26 or 27.

28. All fines recovered under Section 25, Section 26 or Section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

VII. *Suits for compensation.*

Saving of right to sue for compensation.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged

1. This paragraph was added by S 8 of the Cattle Trespass Act (1871) Amendment Act, 1891 (1 of 1891).

2. Certain words were repealed by S. 3 and the Second Schedule of the Repealing and Amending Act, 1914 (10 of 1914).

by trespass of cattle from suing for compensation in any competent Court.

Set-off.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

VIII. Supplement[1].

31. The Local Government may, from time to time by notification in the Official Gazette,—

Power for Local Government to transfer certain functions to local authority and direct credit of surplus receipts to local funds.

(*a*) transfer to any local authority within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or

(*b*) direct that the whole or any part of the surplus accruing in any district under Section 18 of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district.

[2]* * * * *

1. Ch. VIII was added by S. 9 of the Cattle-Trespass Act (1871) Amendment Act, 1891 (1 of 1891).
2. Certain words were repealed by S. 3 and the Second Schedule of the Repealing and Amending Act, 1914 (10 of 1914).

SCHEDULE.

(*See Section 2*)

Number and Year.	Title of Act
III of 1857 . . .	An Act relating to trespasses by cattle.
V of 1860 . . .	An Act to amend Act III of 1857 (relating to trespass by cattle).
XXII of 1861 . .	An Act to amend Act III of 1857 (relating to trespass by cattle)

CHAPTER III.

THE INDIAN ARMS ACT XI OF 1878.

(*As modified up to the 1st March, 1936*)

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ACT XI OF 1878[1].

[15th March, 1878.]

An Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.

Whereas it is expedient to consolidate and amend the law relating to arms, ammunition and military stores; It is hereby enacted as follows:—

I. Preliminary.

Short title. Local extent.

1. This Act may be called the Indian Arms Act, 1878; and it extends to the whole of British India.

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1. For the Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 650; for discussions in Council *see ibid*, 1877, Supplement, pp. 3016 and 3030; *ibid*, 1878, Supplement, pp. 435 and 453.

This Act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1) and Sch. I (Bur. Code); and in the Santhal Parganas, *see* the Santhal Parganas Settlement Regulation (3 of 1872) as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3 (B. & O. Code) and in the Arakan Hill District by Regulation 1 of 1916, s. 2. Bur. Code.

It has been extended to the Myelat in the Federated Shan States by s. 10 (7) of the Burma Laws Act, 1898 (13 of 1898), *see* Notification No. 17, dated 5th March, 1927, Bur. Gazette, 1927, Part I, p 256.

It has been extended under s. 10 (1) of the Burma Laws Act, 1898 (13 of 1898), to the notified areas of Taunggyi in the State of Yawnghwe, Lashio in the State of North Hsenwi and Loilem in the State of Likha and to the Civil Station of Loimwe in the State of Kengtung.

Savings. But nothing herein contained shall apply to—

(a) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

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It has been declared in force except s. 15 in the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913) B. and O. Code.

It has been declared by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazaribagh, Lohardaga and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singbhum, *see* Gazette of India, 1891. Pt. I, p. 504. The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894 ; Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I. p. 44.

It has been extended to British Baluchistan by notification under Sections 5 and 5-A of the Scheduled Districts Act, 1874, with certain modifications and exceptions, *see* p. 97 of the Baluchistan Local Rules and Orders, Edition 1926.

It has been declared in force in Panth Piploda by s. 2 of the Panth Piploda Laws Regulation, 1929 (1 of 1929).

Its application to the Pargana of Spiti is barred by s. 14 of the Spiti Regulation, 1873 (1 of 1873). As to Upper Tanawal in the Hazara District, *see* ss. 3 and 6 (4) of the Hazara (Upper Tanawal) Regulation, 1900 (2 of 1900), Punjab and N. W. F. Code.

It is in force throughout the province of Assam except the Lushai Hills. *see* Notification No. 2443-T., dated the 1st June, 1914, Assam Gazette, 1914, Pt. II, p. 843.

This Act has been amended in its application to—

(1) Burma by the Indian Arms (Burma Amendment) Act, 1928 (Burma Act 7 of 1928) ;

(2) Bengal by the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. Act 21 of 1932) and the Bengal

(b) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of the Government or by a public servant or [a member of either of the forces constituted by the Indian Territorial Force Act, 1920, or the Auxiliary Force Act, 1920][1] in the course of his duty as such public servant or [member].[2]

Commencement.

2. This Act shall come into force on such day[3] as the Governor General in Council by notification in the Gazette of India appoints.

Repeal of enactments.

3. On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules,

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Criminal Law Amendment Act, 1934 (Ben. Act 7 of 1934), and

(3) the North-West Frontier Province by the Indian Arms (N. W. F. P. Amendment) Act, 1934 (N. W. F. P. Act 1 of 1934).

1. These words were substituted for the words "a volunteer enrolled under the Indian Volunteers Act, 1869," by s. 35 of the Auxiliary Force Act 1920 (49 of 1920).

2. This word was substituted for the word "volunteer" by s. 35, *ibid.*

3. The Act came into force on the 1st October, 1878—*see* Notification No. 1169, dated 27th June, 1878, Gazette of India, 1878, Pt. I, p. 369.

conditions and forms prescribed, under any enactment hereby repealed shall be deemed to be respectively given, granted, made, published and prescribed under this Act.

And all such authorities, permissions, licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date on which this Act comes into force, and shall then cease to have effect.

Interpretation-clause.

4. In this Act, unless there be something repugnant in the subject or context,—

"cannon" includes also all howitzers, mortars, wallpieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same :

"arms" includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms :

"ammunition" includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flints, gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre :

"military stores," in any section of this Act as applied to any part of British India, means any military stores to which the Governor General in Council may from time to time, by notification in the Gazette of India, specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the Governor General in Council may from time to time so extend such section :

"license" means a license granted under this Act, and "licensed" means holding such license.

NOTES.

Articles which come and which do not come under Sec. 4.—As a gunbarrel and nipple in serviceable condition fall within the definition of "arms" in Sec. 4 of the Arms Act, 1878, the possession of such article without a license is punishable under Sec. 19 (f) of the said Act[1]. Gunpowder and rockets for fireworks are not ammunition[2]. A revolver with a broken trigger is within the definition of "arms" in Sec. 4 : whether in any particular case an instrument is a fire-arm or not is a question of fact to be determined according to the circumstances : the fact that it is in an unserviceable condition is not conclusive to show that it is not an arm[3]. The true criterion in considering whether any given article comes under the Act is what was the *intention* of the maker as regards its purpose[4].

1. *Q.* v. *Vyapuri Kangani*, 7 Mad. 70.
2. *Q. E.* v. *Suppi*, 5 Mad. 159.
3. *Queen Empress* v. *Jayarami Reddi*, 21 Mad. 360.
4. *Pome* v. *Emp.*, 68 I. C. 818=1 Bur. L.J. 238=11 L. B. R. 340=23 Cr. L. J. 594=A. I. R. 1923 Rang. 23 (1).

II. Manufacture, Conversion and Sale.

Unlicensed manufacture, conversion and sale prohibited.

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores, except under a licence and in the manner and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under Section 27 of this Act shall, without unnecessary delay, give to the Magistrate of the district, or to the officer-in-charge of the nearest police-station, notice of the sale and of the purchaser's name and address.

NOTES.

Kirpans.—The exemption only applies to *Kirpans* actually in existence and possessed or carried by Sikhs and not to the manufacture of Kirpans by Sikhs[1]. (See also notes under section 4.)

III. Import, Export and Transport.

6. No person shall bring or take by sea or by land

1. *Emp.* v. *Basta*, 25 Cr. L. J. 242=77 I. C. 230=3 Lah. 437= A. I. R. 1923 Lah. 267.

Unlicensed importation and exportation prohibited.

into or out of British India any arms, ammunition or military stores except under a licence and in the manner and to the extent permitted by such licence.

Importation and exportation of arms and ammunition for private use.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition ; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Explanation.—Arms, ammunition and military stores taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of and brought into British India within the meaning of this section.

Sanction of Local Government required to warehousing of arms, etc.

7. Notwithstanding anything contained in the Sea Customs Act, 1878, no arms, ammunition or military stores shall be deposited in any warehouse licensed under Section 16 of that Act without the sanction of the Local Government.

8. [*Levy of duties on arms, etc., imported by sea.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

9. [*Power to impose duty on imports by land.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

NOTES.

See notes under Section 4.

Power to prohibit transport.

10. The Governor General in Council may, from time to time, by notification in the Gazette of India,—

(*a*) regulate or prohibit the transport of any description of arms, ammunition or military stores, over the whole of British India or any part thereof, either altogether or except under a licence and to the extent and in the manner permitted by such licence, and

(*b*) cancel any such notification.

Transhipment of arms.

Explanation.—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section.

Power to establish searching stations.

11. The Local Government, with the previous sanction of the Governor General in Council, may at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching-posts at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office.

12. When any person is found carrying or conveying any arms, ammunition, or military stores,

Arrest of persons conveying arms, etc., under suspicious circumstances.

whether covered by a licence or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him.

Procedure where arrest made by person not Magistrate or Police-officer.

Any person so apprehended, and any arms ammunition or military stores so taken by a person not being a Magistrate or Police-officer, shall be delivered over as soon as possible to a Police-officer.

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV. Going armed and possessing Arms, etc.

Prohibition of going armed without license.

13. No person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby.

Any person so going armed without a license or in contravention of its provision may be disarmed by any Magistrate, Police-officer or other person empowered by the Local Government in this behalf by name or by virtue of his office.

NOTES.

Use by another.—The accused who was cousin of

the licensee of a gun borrowed the gun and carried it in a marriage procession when he fired some shots and wounded some people accidentally; *held*, the accused was guilty of an offence under Section 19 of the Arms Act[1].

Retainer.—A license granted to a person and including a retainer, to carry arms, authorises any retainer to carry the arms specified with the permission of his master, and does not restrict him merely to carry them while in the actual presence of his master[2].

Unlicensed possession of fire-arms, etc.

14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a licence and in the manner and to the extent permitted thereby.

[3]* * * * *

NOTES.

See under Section 19.

Possession of arms of any description without license prohibited in certain places.

15. In any place to which Section 32, clause 2, of Act No. XXXI of 1860[4] applies at the time this Act comes into force or to which the Local Government, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette specially extend this

1. *Emp v. Kalyan Chand;* 24 Bom. L. R. 487=22 Cr. L J. 450=67 I. C. 722=A. I. R. 1923 Bom. 35.
2. *Queen Empress v. Kishunua,* 20 Cal 444.
3. The last three paras of s. 14 were repealed by the Repealing and Amending Act, 1891 (12 of 1891).
4. Act 31 of 1860 was repealed by s. 3 of this Act.

section, no person shall have in his possession any arms of any description, except under a licence and in the manner and to the extent permitted thereby.

In certain cases arms to be deposited at police-stations or with licensed dealers.

[16[1]. (1) Any person possessing arms, ammunition or military stores the possession whereof has, in consequence of the cancellation or expiry of a licence or of an exemption or by the issue of a notification under Section 15 or otherwise, become unlawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police-station or, at his option and subject to such conditions, as the Local Government may by rule prescribe, with a licensed dealer.

(2) When arms, ammunition or military stores have been deposited under sub-section (1) or, before the first day of January, 1920, under the provisions of any law for the time being in force, the depositor shall, at any time before the expiry of such period as the Local Government may by rule prescribe be entitled—

(a) to receive back any thing so deposited the possession of which by him has become lawful, and

(b) to dispose, or authorize the disposal of any thing so deposited by sale or otherwise to any person whose possession of the same would be lawful; and to receive the proceeds of any such sale :

1. This section was substituted by s. 2 of the Indian Arms (Amendment) Act, 1919 (20 of 1919).

Provided that nothing in this sub-section shall be deemed to authorize the return or disposal of anything the confiscation of which has been directed under Section 24.

(3) All things deposited as aforesaid and not returned or disposed of under sub-section (2) within the prescribed period therein referred to shall be forfeited to His Majesty.

(4) (a) The Local Government may make rules consistent with this Act for carrying into effect the provisions of this section.

(b) In particular and without prejudice to the generality of the foregoing provision, the Local Government may by rule prescribe—

(i) the conditions subject to which arms, ammunition and military stores may be deposited with a licensed dealer, and

(ii) the period after the expiry of which things deposited as aforesaid shall be forfeited under sub-section (3).]

Power to make rules as to licences.

17. The Governor General in Council may from time to time, by notification in the Gazette of India, make rules[1] to determine the officers by whom, the form in which, and the terms and conditions on and subject to which, any licence shall be granted ; and may by such rules among other matters—

(a) fix the period for which such licence shall continue in force ;

1. See the Indian Arms Rules, 1924.

(*b*) fix a fee payable by stamp or otherwise in respect of any such licence granted in a place to which Section 32, clause 2, of Act No. XXX of 1860[1] applies at the time this Act comes into force, or in respect of any such licence other than a licence for possession granted in any other place ;

(*c*) direct that the holder of any such licence other than a licence for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such licence, and exhibit such record or account when called upon by an officer of Government to do so ;

(*d*) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a licence of the description referred to in Section 5 or Section 6 ;

(*e*) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered ; and

(*f*) require the person holding any licence or acting under any licence to produce the same, and to produce or account for the arms, ammunition or military stores by the same when called upon by an officer of Government so to do.

Cancelling and suspension of licence.

18. Any licence may be cancelled or suspended—

(*a*) by the officer by whom the same was granted, or by any authority to which he may be subordinate,

1. Act 31 of 1860 was repealed by s. 3 of this Act.

or by any Magistrate of a district, or Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction the holder of such licence may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such licence ; or

(*b*) by any Judge or Magistrate before whom the holder of such licence is convicted of an offence against this Act, or against the rules made under this Act ; and

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licences throughout the whole or any portion of the territories under its administration.

For breach of Sections 5, 6, 10, 13 to 17.

19. Whoever commits any of the following offences (namely) :—

(*a*) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of Section 5 ;

(*b*) fails to give notice as required by the same section ;

(*c*) imports or exports any arms, ammunition or military stores in contravention of the provisions of Section 6 ;

(*d*) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under Section 10 ;

(*e*) goes armed in contravention of the provisions of Section 13 ;

(*f*) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of Section 14 or Section 15.

(*g*) intentionally makes any false entry in a record or account which, by a rule made under Section 17, clause (*c*), he is required to keep ;

(*h*) intentionally fails to exhibit anything which, by a rule made under Section 17, clause (*e*), he is required to exhibit ; or

(*i*) fails to deposit arms, ammunition or military stores, as required by Section 14 or Section 16 ;

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

NOTES.

Hidden arms.—See under Section 20. *Kripan* see under Sec. 5. *Going armed* see under Section 13.

Gunpowder.—The possession of gunpowder without a licence whether intended for the manufacture of fire-works or not, is an offence under Sec. 19[1].

Temporary possession.—The mere temporary possession, without a licence of arms for purposes other than their use as such, as for instance, where a servant is carrying his master's gun to a blacksmith for repairs, or where a blacksmith has a gun left with him for repairs, is an offence within the meaning of Section 19[2].

Search—recovery.—Recovery of arms by search not in the presence of witnesses cannot be relied on[3].

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1. *Queen Empress* v. *Khasim Sahib*, 8 Mad. 202. *Queen* v. *Suppi*, 5 Mad. 159 *distinguished.*
2. *Queen Empress* v. *Tota Ram*, 16 All. 276.
3. *Alifdin* v. *Emp.*, A I. R. 1923 Lah 466.

Cl. (c). Presumption.—Where a person is found carrying arms apparently in contravention of the provisions of the Arms Act, it must be presumed, in the absence of proof to the contrary, that he is carrying such arms with the intention of using them, should an opportunity of using them arise[1].

See also notes under Section 19 clause (f).

Intention—use by servant.—"Armed" includes carrying an arm not capable of immediate use[2]. Intention and possibility of using are essential[3]. A servant used a gun for his own purposes in the absence of his master and the gun was confiscated. *Held,* that the order of confiscation of the gun was wrong though the servant might be rightly convicted of an offence under Section 19[4].

Sanction.—Conviction under Section 19 (f) is bad, if no express sanction is obtained.—No sanction is necessary for prosecution under Section 20[5].

Use of arms—where no offence.—When communal riots were taking place in different quarters of the town, the accused, the brother of a license-holder, tookout his brother's gun and fired shots in the air so

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1. *Queen Empress* v. *Bhure,* 15 All. 27.
2. *Emp.* v. *Mahomed Punja,* 25 Cr. L. J. 448=77 I. C. 736= A. I. R. 1925 Sind. 177.
3. *Sonaimuthu Ambalam* v. *Emp.,* 48 M. L. J. 502=21 L.W. 644= 87 I. C. 916=(1925) M. W. N. 217=A. I. R. 1925 Mad. 585 (1).
4. In re *Vairavan Servai* 46 M. L. J. 401=47 Mad. 438=19 L. W. 507=34 M. L. T. 97=(1924) M. W. N. 375=81 I. C. 623= 25 Cr. L. J. 975=A. I. R. 1924 Mad. 668.
5. *Nga Tha Hla* v. *Emp.,* 2 Bur. L.J. 203=25 Cr.L.J. 208=76 I.C. 571=A. I. R. 1924 Rang. 85.

that people mischievously inclined might know that it was not safe for them to do any mischief to the people living in the house. *Held*, that the possession of the gun was on behalf of the brother and the accused was not guilty under Section 19[1].

Extending time of renewal of licence.—An order extending the time for renewal of licence has the effect of keeping a licence previously granted practically in force and a person cannot be convicted of an offence under Section 19 (f) for a breach of its provisions within the extended time[2].

Possession of arms.—Hindu joint family.—Where proceedings under the Indian Arms Act, 1878, in respect of the unlawful possession of arms are taken against a member of a joint Hindu family, not being the head of such joint family, and arms are found in a common room of the joint-family house, it is incumbent upon the prosecution to give good evidence that such arms are in the exclusive possession and control of the particular member of the joint family who is sought to be charged with their possession[3].

Where it was found that the two accused were found lying on a bed in the house of another and in the bedding a *chhavi* was found wrapped in a cloth. *Held*, it was impossible to say which of the two was actually in possession[4].

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1. *Babu Ram* v. *Emp.*, 23 A. L. J. 356 L. R. 6 A. Cr. 121=87 I. C. 523=47 All. 606=A. I. R. 1925 All. 396.
2. In re *Kalinath Singh*, 3 O. W. N. 394.
3. *Q. E.* v. *Sangam Lal*, 15 All. 129.
4. *Niranjan Singh* v. *Emp.*, 65 I. C. 447 (1)=23 Cr. L. J. 95. (L).

Use by son of licencee.—Son of a licencee (the latter not being entitled to hand over gun to retainer) was convicted for possessing father's gun for shooting birds[1].

For secret breaches of Sections 5, 6, 10, 14 and 15.

XLV of 1860.

20. Whoever does any act mentioned in clause (*a*), (*c*), (*d*) or (*f*) of Section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway or to the servant of any public carrier,

For concealing arms, etc.

and whoever, on any search being made under Section 25, conceals or attempts to conceal any arms, ammunition or military stores, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

NOTES.

Concealment.—Export or import of arms.—Where arms and ammunition are found in a bag hidden under a *chaddar* worn by the accused, the offence falls also under Section 20 of the Arms Act and not merely under Section 19[2].

Sanction—See under Sec. 19 (f).

1. *Muhammad Hasan* v. *Emp.*, 22 A. L. J. 1025=L. R. 6A. Cr. 23=47. All. 267=A. I. R. 1925 All. 175.
2. *Mt. Bobo* v. *Emp.*, 26 Cr. L. J. 1459 (2)=89 I. C. 1027 (2).

Section 20 applies only where export or import of arms is attempted[1].

Each case of concealment of arms must be decided on its own facts[2]. Instruments of attack and defence, as are not used for domestic purposes are arms[3].

For breach of licence.

21. Whoever, in violation of a condition subject to which a licence has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under Section 19 or Section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For knowingly purchasing arms, etc., from unlicensed person.

22. Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorized under the proviso to Section 5 to sell the same ; or

For delivering arms, etc., to person not authorised to possess them.

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

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1. *Channan* v. *Crown*, 6 Lah. 151=86 I. C. 221=26 Cr. L. J. 733=7 Lah. L. J. 329=A. I. R. 1925 Lah. 395 (2).
2. *Sher Ali* v. *Emp.*, 23 Cr. L. J. 609=68 I. C. 833=A. I. R. 1923 Lah. 79.
3. *Mangal Singh* v. *Emp.*, 2 Lah. 291=23 Cr. L. J. 63=12 P.L.R. 1922=64 I. C. 847=A. I. R. 1923 Lah. 138 (2).

Penalty for breach of rule.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Power to confiscate.

24. When any person is convicted of an offence, punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated.

NOTES.

Possession.—See under Section 19.

VII. Miscellaneous.

Search and seizure by Magistrate.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the

house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a licence, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of a Magistrate, or by, or in the presence of some officer specially empowered in this behalf by name or in virtue of his office by the Local Government.

NOTES.

An unlicensed pistol was found in a shop. The master being absent, the servant in possession of the pistol was convicted for the offence. *Held*, the master was not liable to be convicted[1].

Possession—See under Sec. 19.

Seizure and detention by Local Government.

26. The Local Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

Power to exempt.

27. The Governor General in Council may from time to time, by notification published in the Gazette of India,—

(*a*) exempt any person by name or in virtue of

1. *Chhotey* v. *Emperor*, 20 A. L. J. 855=L. R. 3A. 171 (Cr.)= 9 O. & A. L. R. (A) 27=23 Cr. L. J. 729=69 I. C. 457=A. I. R. 1923 All. 33.

his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act ; and

(*b*) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction.

Information to be given regarding offences.

28. Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regarding any box, package or bale in transit which he may have reason to suspect contains arms, ammunition or military stores in respect of which an offence against this Act has been or is being committed.

Sanction required to certain proceedings under Section 19, clause (*f*).

29. Where an offence punishable under Section 19, clause (*f*), has been committed within three months from the date on which this Act comes into force in any province, district or place to which Section 32, clause 2, of Act XXXI of 1860[1] applies at such date, or where such an offence

1. Act 31 of 1860 was repealed by s. 6 of this Act.

has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the District or, in a Presidency-town, of the Commissioner of Police.

Searches in the case of offences against Section 19, clause (*f*), how conducted.

30. Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrates Act, 1877[1] in the course of any proceedings instituted in respect of an offence punishable under Section 19, clause *(f)*, such search shall, notwithstanding anything contained in the said Code or Act, be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise.

Operation of other laws not barred.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act: Provided that no person shall be punished twice for the same offence.

Power to take census of fire-arms.

32. The Local Government may from time to time, by notification in the local official Gazette, direct a census to be taken

1. For the reference to Act 10 of 1872 and the Presidency Magistrates Act, 1877 (4 of 1877), read now Act 5 of 1898.

of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Notice and limitation of proceedings.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof nor after the expiration of three months from the accrual of such cause.

(The First Schedule. The Second Schedule.)

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See Section 3.)

Number and year.	Title.	Extent of repeal.
XVIII of 1841	An Act for consolidating and amending the enactments concerning the exportation of Military Stores.	So much as has not been repealed.
XXX of 1854	An Act to provide for the levy of duties of Customs in the Arracan, Pegu, Martaban and Tenasserim Provinces.	In the preamble, the words "and that the exportation of munitions of war from any of these Provinces into foreign States should be prohibited." Section 11[1].
		So much as has not been repealed.
XXXI of 1860	An Act relating to the manufacture, importation and sale of Arms and Ammunition and for regulating the right to keep and use the same, and to give power of disarming in certain cases.	

1. The rest of Act 30 of 1854 was repealed by s. 5 of the Upper Burma Laws Act, 1886 (20 of 1886).

The First Schedule—(Contd.)

Number and year.	Title.	Extent of repeal.
VI of 1866	An Act to continue Act No XXXI of 1860 (relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes.	The whole.
III of 1872	The Santhal Parganas Settlement Regulation.	So much of the schedule as relates to Act XXXI of 1860 and Act VI of 1866.
* * *	* * * *	* * *
XV of 1874	An Act for declaring the local extent of certain enactments and for other purposes.	So much of the first schedule as relates to Act XVIII of 1811.

THE SECOND SCHEDULE.

ARMS, ETC., LIABLE TO DUTY.

[*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

2. The entry relating to Regulation IX of 1874 was repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1930 (8 of 1930).

CHAPTER IV.

THE INDIAN MOTOR VEHICLES ACT VIII of 1914.

(As Modified up to 1st April 1931)

CONTENTS.

Sections.

Act No. VIII of 1914[1].

An Act to consolidate and amend the law relating to Motor Vehicles in British India.

(Received the assent of the Governor General on the 28th February, 1914.)

Whereas it is expedient to consolidate and amend the law relating to motor vehicles in British India; It is hereby enacted as follows :—

I. Preliminary.

Short title, extent and commencement. **1.** (*1*) This Act may be called the Indian Motor Vehicles Act, 1914.

(*2*) This Act, except Part III thereof, extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the Parganas of Spiti. Part III extends in the first instance only to the Provinces of Madras, Bombay, Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma, Bihar and Orissa, the North-West Frontier Province and Delhi. The Local Government of any other Province may, by notification in the local

1. For Statement of Objects and Reasons, *see* Gazette of India, 1913, Pt. V, p. 186 ; for Report of Select Committee, *see ibid*, 1914, Pt. V. p. 59 ; and for Proceedings in Council, *see ibid*, 1913, Pt. VI. p. 566, and *ibid*, 1914, Pt. VI, pp 64, 325 and 496.

The Act has been declared in force in the Angul District by s. 5 of the Angul Laws Regulation, 1913 (3 of 1913), *see* B. & O. Gazette, 1918, Pt. II. p. 143.

The Act has been applied to part of the Manipur State subject to modifications, *see* Notification No. 94-I., dated 25th February 1924, Gazette of India, 1924, Pt. I, p. 179.

official Gazette, extend[1] Part III to the whole or any part of such province.

(3) It shall come into force on such date[2] as the Governor General in Council, by notification in the Gazette of India, may direct.

Definitions.

2. "Motor vehicle" includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially;

"prescribed" means prescribed by rules under this Act;

"public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass.

II. Provisions of General Application.

Prohibition of driving motor vehicles by persons under 18.

3. (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

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1. For extension of Pt. III of this Act to—
   Central Provinces, *see* C. P. Gazette, 1915, Pt. I, p. 496.
   British Baluchistan, *see* Gazette of India, 1918, Pt. II, p. 580.
   Coorg, *see* Coorg Local Rules and Orders, Pt. II, p. 114.

Kamrup, Khasi and Jaintia Hills Districts in Assam, *see* Assam Local Rules and Orders, Vol. I, Pt. II, p. 531.

Sonthal Parganas, *see* B. & O. Gazette, 1926, Pt. II, p. 1220.

2. The 1st April 1915, *see* General Statutory Rules and Orders, Vol. IV, p. 490.

The Act has been extended to the Pargana of Manpur, subject to certain modifications, *see* Notification No. 1702-B., dated 23rd October 1926, Gazette of India, 1926, Pt. II-A, p. 377.

(2) No owner or person in charge of a motor vehicle shall allow any person under the age of eighteen years to drive the same in any public place; and in the event of a contravention of sub-section (*1*), the Court may presume that the motor vehicle was driven with the consent of the owner or person in charge.

Duty to stop vehicle for regulating traffic and in case of accident.

4. The person in charge of a motor vehicle shall cause the vehicle to stop and to remain stationary so long as may reasonably be necessary—

(*a*) when required to do so by any police-officer for the purpose of regulating traffic or of ascertaining his name and address with a view to prosecuting such person under this Act or for any purpose connected with the enforcement of the provisions of this Act or the rules thereunder, or

(*b*) when required to do so by any person having charge of any animal if such person apprehends that the animal is, or will be alarmed by the motor vehicle, or

(*c*) when he knows or has reason to believe that an accident has occurred to any person or to any animal or vehicle in charge of a person owing to the presence of the motor vehicle and he shall also, if so required, give his name and address and the name and address of the owner of such motor vehicle.

NOTES.

Stopping by Police.—A Police Officer who is not engaged in regulating traffic has got the power, under Section 4, part (a) of the Motor Vehicles Act, to stop

the driver of a Motor-Bus on the ground that the bus is over-loaded and that he wishes to inspect it and check the license[1].

Reckless driving.

5. Whoever drives a motor vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place and the amount of traffic which actually is at the time, or which might reasonably be expected to be, in the place, shall, on conviction, be punishable with fine which may extend to five hundred rupees.

NOTES.

Bad driving.—In case of a driver of many years' standing having no previous conviction and holding certificates for good driving, the license should not be cancelled for his first offence of bad driving[2].

Accused, seeing another car approaching in addition to the one passing in his direction and trying to force his way on, is liable to be convicted under this section[3].

Driving on wrong side.—This section does not cover a case of a person driving on the wrong side of the road[4].

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1. In re. *Ramanujan Naidu*, 30 L. W. 468=1929 M. W. N. 596=57 M. L. J. 457.
2. *Charan Singh* v. *Emperor*, 23 A. L. J. 790=L. R. 6A. Cr. 150=26 Cr. L. J. 1254=88 I. C. 998=A. I. R. 1925 All. 798.

2 & 3. *Charan Singh* v. *Emperor*, 23 A. L. J. 790=L. R. 6 A (Cr.) 180=26 Cr. L. J. 1254=88 I. C. 998=A. I. R. 1925 All. 798.

4. *Yar Mahammed* v. *Emperor*, 26 Cr. L. J. 253=84 I. C. 253=16 S. L. R. 147.

Driving recklessly.—Accused drove a baby-car at 25 miles per hour passing two cars running at 20 miles; there were two motor cars going along the road to the north at about 20 miles per hour while another car was proceeding from north to south. The accused passed the two cars going towards the north. The road at the place was about 40 to 50 ft. wide and there was ample room for four cars to pass abreast and there was no traffic of any kind at the time except the four cars in question. *Held,* on the facts that even if the accused had gone slightly to the right over the middle of the road, he could not be assumed to have driven his car recklessly or negligently[1].

Driving in intoxicated state.—The accused drove his car while in an intoxicated state and as a result of rash driving a collision occurred. His offence came under Section 5 of the Motor Vehicles Act and also under R. 27-A of the Bombay Motor Vehicles Rules[2].

It is of utmost public importance that persons who are under the influence of drink should never be in charge of motor vehicles[3].

III. *Licensing and Control.*

Licensing of drivers.

6. No person shall drive a motor vehicle in a public place unless he is licensed in the prescribed manner, and no owner

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1. *Ganguli* v. *Emperor*, 115 I. C. 900=30 Cr. L. J. 539.=A. I. R. 1929. Rang 14 (1).
2. *Emperor* v. *Rama Deoji*, 30 Bom. L. R. 636=112 I. C. 101=29 Cr. L. J. 981=A. I. R. 1928 Bom. 231.
3. *Collett* v. *Emperor*, 1929 M. W. N. 395.

or person in charge of a motor vehicle shall allow any person who is not so licensed, to drive it :

Provided that, subject to rules made by the Local Government in this behalf, this section shall not apply to a person receiving instruction in driving a motor vehicle.

NOTES.

Driving with expired license.—Where a Motor Bus owner allowed his driver to drive his omnibus without a license and when charged under Section 6 of the Motor Vehicles Act, pleaded that the expiry of the license was without his knowledge. *Held,* that he was guilty of an offence under Section 6 as the owner is bound to see himself that the driver is licensed[1].

Transfer of licence.

7. The holder of a licence shall not allow it to be used by any other person.

Production of licence.

8. The driver of a motor vehicle shall produce his licence upon demand by any Police-Officer.

NOTES.

Omission to carry licence—non-production.—The driving of a motor car by a properly licensed driver who omits to carry the licence with him is not an offence. It is only the non-production of the licence on demand by a police-officer that constitutes the offence under the Section[2]. No person is a driver

1. *Crown Prosecutor* v. *Khadir Mohideen*, 26 L. W. 568=(1927) M. W. N. 852=105 I C. 674 (1)=28 Cr. L. J. 962 (1)= A. I. R. 1927 Mad. 1080=53 M. L. J. 757 (1).

2. *Dheklia Kunbi* v. *Emperor*, 65 I. C. 425=23 Cr. L. J. 73= A. I. R. (1922) Nag. 71.

within the meaning of Section 8 unless he is actually driving[1].

Extent of validity of licence to drive.

9. Every licence to drive a motor vehicle shall be valid in such area as may be specified therein :

Provided that no licence shall specify any area outside the province in which it is granted, unless it is issued * * *[2] in accordance with such conditions and restrictions as the Governor General in Council may impose.

Registration of motor vehicles.

10. *(1)* The owner of every motor vehicle shall cause it to be registered in the prescribed manner.

(2) Such registration shall be valid in such area as may be specified in the certificate of registration :

Provided that no certificate of registration shall be valid outside the province in which it is granted unless it is issued in accordance with such conditions and restrictions as the Governor General in Council may impose.

Power of Local Government to make rules.

11. *(1)* The Local Government, subject to the condition of previous publication, shall make rules[1] for the purpose of carrying into effect the provisions of this Act and of regulating, in the whole or any part of the territories under its administration, the use of motor

1. *Emperor* v. *Sitaram*, 49-A, 754=8 L. R. 69 (Cr.)=101 I. C. 668=7A. I. C. R. 443=25-A. L. J. 574=28 Cr. L. J. 492= A. I. R. 1927 All. 478.
2. The words "by such authority and" were repealed by s. 3 and Sch. II of the Second Repealing and Amending Act, 1914 (17 of 1914).

vehicles or any class of motor vehicles in public places.

(2) In particular, and without prejudice to the generality of the foregoing powers, the Local Government may make rules for all or any of the following purposes, namely :—

(a) providing for the registration of motor vehicles, and the conditions subject to which such vehicles may be registered, the fees payable in respect of and incidental to registration, the issue of certificates of registration, the notification of any changes of ownership, and (subject to the provisions of section 10), the area in which [and the duration for which] certificates of registration shall be valid ;

(b) providing for facilitating the identification of motor vehicles by the assignment of distinguishing numbers to such vehicles and the displaying of number and name plates thereon, or in any other manner ;

(c) regulating the construction and equipment of motor vehicles, including the provision and use of lights, bells, horns, brakes, speed indicators or other appliances ;

(d) prescribing the authority by which, and the conditions subject to which, drivers of motor vehicles or any class of such drivers may be licensed, the fees payable in respect of such licences, and (subject to the provisions of Section 9), the area within which, and the duration for which, licences shall be valid ;

[(dd) prescribing the authority by which, and

the conditions and limitations subject to which, licences may be suspended or cancelled ;][1]

(e) prescribing the conditions subject to which, and the fees (if any) on payment of which, motor vehicles may be let or plied for hire in public places, generally or in any particular public place ;

(f) prescribing the precautions to be observed when motor vehicles are standing in any public place ;

(g) limiting the speed at which motor vehicles may be driven generally or in any particular public place ;

(h) prohibiting or regulating the driving of motor vehicles in public places, where their use may, in the opinion of the Local Government, be attended with danger or inconvenience to the public ; and

(i) providing generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property, or of obstruction to traffic.

(3) All rules made under this section shall be published in the local official Gazette ; and on such publication, shall have effects as if enacted in this Act.

NOTES.

Section 11 Calcutta. Rules. Part. II. Rule 2.—Driving at excessive speed.—A driver of a Motor-

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1. This clause was inserted by s. 2 of the Indian Motor Vehicles (Amendment) Act, 1920 (27 of 1920).

Lorry drove the lorry at excessive speed. The owner who had prohibited such driving was not present. It was *held* that the owner was not liable for the act of the driver[1].

The person responsible for having a board fixed upon the vehicle is the owner and not the person, who from time to time may have the use of the car[2].

Posting of notices.

12. The prescribed authority shall give, in the prescribed manner, public notice of any rule, made by the Local Government under Section 11, prohibiting or regulating the driving of motor vehicles in any public place; or limiting the speed of motor vehicles in any such place; and for the purpose of giving effect to any such rule, shall display conspicuous notice at or near the place to which the rule refers.

Power to Local Government to exclude areas or motor vehicles from this Part.

13. The Local Government may, by notification in the local official Gazette, exclude any area specified in such notification from the operation of this Part; and may, by a like notification, exempt either generally or for a specified period any motor vehicle or class of motor vehicles from the operation of all or any of the provisions of this Part.

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1. *Varaj Lall* v. *Emperor*, 51 Cal. 948=28 C. W. N. 854=82 I. C. 837=25 Cr. L. J. 1209=A. I. R. 1924 Cal. 985.
2. *Aklu* v. *Emperor*, 7 Pat. L. T. 542=97 I. C. 48=27 Cr. L. J. 1072=A. I. R. 1926 P. 446.

IV. Motor Vehicles temporarily leaving or visiting British India.

Power of Governor General in Council to make rules.

14. (1) The Governor General in Council may make rules[1] for all or any of the following purposes, namely :—

(*i*) for the grant and authentication of any travelling passes, certificates or authorities for the use of persons temporarily taking their motor vehicles out of British India, or to drivers of such vehicles when proceeding out of British India for the purpose of driving such vehicles, and

(*ii*) prescribing the conditions subject to which motor vehicles brought temporarily into British India by persons intending to make a temporary stay there may be possessed, used and driven.

(2) All rules made under this section shall be published in the Gazette of India ; and, on such publication, shall have effect as if enacted in this Act.

Saving.

15. Nothing in this Act or in any rule made [by the Local Government under section 11][2] relating to—

(*a*) the registration of motor vehicles,

(*b*) requirements as to construction, identification or equipment of such vehicles, or

(*c*) the licensing or qualifications of drivers of such vehicles,

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1. For rules made under s. 14, *see* General Statutory Rules and Orders, Vol. IV. pp. 490-503.

2. These words and figures were substituted for the word "thereunder" by s. 2 and Sch. of the Amending Act, 1916 (13 of 1916).

shall apply in the case of any motor vehicle such as is referred to in clause (*ii*) of sub-section (1) of Section 14, or of any person possessing, using or driving the same, provided that the requirements of any rule made under the said clause and applicable to such vehicle or person are complied with.

V. Miscellaneous.

Penalties.

16. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to one hundred rupees, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

NOTES.

Burma Rule 26 (3):—Driving without proper illumination.—The owner of a Motor Car is not criminally liable for negligence of the driver in driving the car without properly illuminating it if the owner had made provisions for such illumination[1].

Private car used by a third party paying price of petrol—if hiring.—The mere payment to the owner of a Motor Vehicle of the cost of petrol used, is not payment for the use of the vehicle. The transaction does not amount to one of hiring.[2]

1. *Mahomed Surty* v. *Emperor.* 1 R. 600=2 Bur. L. J. 201=25 Cr. L. J. 196=76 I. C. 564=A. I. R. 1924 Rang. 63.
2. In re. *Kadir Mohideen Sahib,* A. I. R. 1935 Mad. 577=68 M. L. J. 481.

17. No Court inferior to that of a Presidency Magistrate or a Magistrate of the Second Class shall try any offence punishable under this Act or any Rule made thereunder.

Cognizance of offences.

18. (1) A Local Government may, in its discretion,—

Cancellation and suspension of licence and disqualification for obtaining licence.

(i) cancel or suspend any licence granted under this Act, and

(ii) declare any person disqualified for obtaining a licence under this Act either permanently or for such period as it thinks fit.

[(1-A) The prescribed authority may, subject to such conditions and limitations as may be prescribed, cancel or suspend any licence granted under this Act.][1]

(2) Any Court by which any person is convicted of an offence against the provisions of this Act or any Rule made thereunder or of any offence in connection with the driving of a motor vehicle shall, if such person holds a licence under the Act, cause particulars of the conviction to be endorsed thereon and may, in respect of such person and of his licence, if any, exercise the like powers as are conferred by sub-section (1) on the Local Government.

Provided that no order made by a Court under this sub-section shall affect any person on licence for a period exceeding one year from the date of such conviction.

(3) Any Court before which the holder of a licence under this Act is accused of any offence men-

1. This sub-section was inserted by s. 3 of the Indian Motor Vehicles (Amendment) Act, 1920 (27 of 1920).

tioned in sub-section (2) may suspend such licence until the termination of the proceedings before it.

(4) A copy of every order of cancellation, suspension or disqualification made under this section in respect of a licence or the holder of a licence shall be endorsed on the licence, and a copy of every endorsement, in accordance with the provisions of this section, shall be sent to the authority by which such licence has been granted.

(5) Every holder of a licence shall, when called upon to do so, produce his licence before any authority acting under this section.

(6) A person whose licence has been cancelled or suspended in accordance with the provisions of this section, shall, during the period for which such order of cancellation has effect, or during the period of suspension, as the case may be, be disqualified for obtaining a licence.

(7) No person whose licence has been endorsed or who has been disqualified for obtaining a licence shall apply for, or obtain a licence without giving particulars of such endorsement or disqualification.

NOTES.

Fine—cancelment of licence.—In case of dangerous driving, fine imposed should be proportionate to the means of a professional driver; the best course for a Magistrate is to exercise powers under Section 18(2).[1]

Non-production of licence—sentence—appeal.—Non-production of licence when demanded by police is a

1. *Emperor* v. *Basappa Rachappa*, 27 B. L. R. 1056=90 I. C. 320=A. I. R. 1925 Bom. 526.

trivial and technical offence. The order of suspension under Section 18(2) along with the fine is appealable. There is no prohibition against the driving of a car by a properly licensed person who has not got his licence with him[1].

19. *Repealed by the Repealing Act, (12 of 1927).*

SCHEDULE.

[*Repealed by the Repealing Act, 1927 (12 of 1927).*]

CHAPTER V.

THE WHIPPING ACT. (Act No. IV of 1909.)

An Act to consolidate and amend the law relating to the punishment of whipping.

(*Received the assent of the Governor General on the 22nd March 1909.*)

Whereas it is expedient to consolidate and amend the law relating to the punishment of whipping ; It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Whipping Act, 1909 ; and

(*2*) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas.

Whipping added to punishments described in Act XLV of 1860.

2. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to the punishment of whipping.

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1. *Dheklia Kunbi* v. *Emperor,* 23 Cr. L. J. 73=65 I. C. 425= A. I. R. 1922 Nag. 71.

Offences punishable with whipping in lieu of other punishment.

3. Whoever commits any of the following offences, namely :—

(*a*) theft, as defined in Section 378 of the Indian Penal Code other than theft by a clerk or servant of property in possession of his master;

(*b*) theft in a building, tent or vessel, as defined in Section 380 of the said Code ;

(*c*) theft after preparation for causing death or hurt, as defined in Section 382 of the said Code ;

(*d*) lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section ;

(*e*) lurking house-trespass by night, or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section, may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the said Code.

NOTES.

Whipping in addition to other punishment.—Under this section imprisonment or fine cannot be added to whipping[1].

Outraging woman's modesty.—The offence of outraging a woman's modesty not being punishable with

1. *S. B. Varada Rajulu v. Emperor*, 20 L. W. 881=25 Cr. L. J. 1185=82 I. C. 49=A. I. R. 1925 Mad. 183.

whipping, house-breaking in order to commit that offence cannot be so punished[1].

Offences punishable with whipping in lieu of or in addition to other punishment.

4. Whoever—

(*a*) abets, commits or attempts to commit, rape, as defined in Section 375 of the Indian Penal Code ;

(*b*) compels, or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in Section 377 of the said Code ;

(*c*) voluntarily causes hurt in committing or attempting to commit robbery, as defined in Section 390 of the said Code ;

(*d*) commits dacoity as defined in Section 391 of the said Code ;

may be punished with whipping in lieu of or in addition to any other punishment to which he may, for such offence, abetment or attempt, be liable under the said Code.

NOTES.

Under Section 4 of the Whipping Act, a sentence of whipping may be imposed where in the commission of a robbery, hurt is caused. It should be inflicted in cases where there is a certain amount of aggravation in the commission of the primary offence[2].

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1. *Darbari Lall* v. *Emperor*, L. R. 5-A (Cr.) 135=89 I. C. 146=23 A. L. J. 894=26 Cr. L. J. 1282=A. I. R. 1925 All. 591.
2. *Badri Prasad* v. *Emperor*, 44-A, 538=20 A. L. J. 388=4 U. P. L. R. (All.) 67=66 I. C. 418=23 Cr. L. J. 274=A. I. R. 1922 All. 245.

Juvenile Offenders when punishable with whipping.

5. Any juvenile offender who abets, commits or attempts to commit,—

(*a*) any offence punishable under the Indian Penal Code, except offences specified in Chapter VI and in Sections 153-A and 505 of that Code and offences punishable with death, or

(*b*) any offence punishable under any other law with imprisonment, which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf,

may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable.

Explanation.—In this section the expression "juvenile offender" means an offender whom the Court, after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

NOTES.

Whipping and fine illegal.—Under this section no other sentence can be passed when a sentence of whipping has been passed, as whipping is considered to be a substitute for some other sentence[1].

Difference between adult and juvenile offender.—On reading Sections 4 and 5 of the Whipping Act, it is clear that in the case of an adult a sentence of

1. *Kishen Singh* v. *Emperor*, 21 A. L. J. 916=46-A, 174=L. R. 5-A, 54 (Cr.)=A. I. R. 1924 All. 455.

whipping may be imposed in addition to any other punishment, but in the case of juvenile offenders no other punishment can be combined with whipping; a sentence of whipping can be imposed in lieu of and not in addition to any other punishment[1].

Special provision as to punishment with whipping in frontier districts.

6. Whenever any Local Government has, by notification in the official Gazette, declared the provisions of this section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who in such district or tract of country after such notification as aforesaid commits any offence punishable under the Indian Penal Code with imprisonment for three years or upwards, may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code.

Amendment of Section 392, Act V, 1898.

7. To Section 392, sub-section (2), of the Code of Criminal Procedure, 1898, the words "and in the case of a person under sixteen years of age, it shall not exceed fifteen stripes" shall be added.

8. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

1. *Lurkhur* v. *Emperor*, 57 All. 395=153, I. C. 582=36 Cr. L. J. 368=A. I. R. 1934 All. 976.

THE SCHEDULE.

(*See Section 8.*)

ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
		Acts of the Governor General in Council.	
1864	VI	The Whipping Act, 1864.	So much as is unrepealed.
1895	III	The Indian Criminal Law Amendment Act, 1895.	Section 5.
1898	V	The Code of Criminal Procedure, 1898	The words "whipping (if specially empowered)" in sub-section (1) and sub section (3) of Section 32.
			The words and figures '(1) Power to pass sentences of whipping, Section 32' under the heading 'Powers with which a Magistrate of the Second Class may be invested' in Schedule IV.
1898	XIII	The Burma Laws Act, 1898. ...	Section 4, sub-section (3), clause (b), and the second Schedule.
1900	V	The Whipping Act, 1900	The whole Act.

CHAPTER VI.

THE INDIAN EXPLOSIVES ACT IV OF 1884.

(*As modified up to the 15th August, 1934.*)

CONTENTS.

ACT IV OF 1884[1].

An Act to regulate the manufacture, possession, use, sale, transport and importation of Explosives.

26th February, 1884.

Whereas it is expedient to regulate the manufacture, possession, use, sale, transport and importation of explosives ; It is hereby enacted as follows :—

Short title.

1. (*1*) This Act may be called the Indian Explosives Act, 1884, and

Local extent.

(*2*) It extends to the whole of British India.

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1. For Statement of Objects and Reasons, *see* Gazette of India, 1883, Pt V, p. 22 ; for Proceedings in Council, *see ibid*, 1882, p. 1856, and *ibid*, 1883, Supplement, p. 43, and *ibid*, 1884, Supplement, p. 377.

This Act has been declared, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (14 of 1874) to be in force in the Districts of Hazaribagh, Lohardaga (now called the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44), Palamau and Manbhum and in Pargana Dhalbhum and the Kolhan in the Singbhum District of the Chota Nagpur Division—*see* Gazette of India, 1896, Pt. I, p. 972.

It has been applied to the Santhal Parganas under s. 3 of the Santhal Parganas Settlement Regulation (3 of 1872), as amended by the Santhal Parganas Laws Regulation, 1886 (3 of 1886), and by s. 3 of Regulation 3 of 1899, Ben. Code.

The Act has been declared in force in Upper Burma (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*) and Sch. I, Bur. Code. It had previously been extended there under s. 5 of Act 14 of 1874—*see* Gazette of India, 1888, Pt. I, p. 539, and was declared to come into force on 19th February, 1889—*see* Bur. R. M.

Commencement.

2. (1) This Act shall come into force on such day[1] as the Governor General in Council, by notification in the Gazette of India, appoints :

[2]* * * * * *

3. [*Repeal of portions of Act XII 1875.*] *Repealed by Act X of 1889.*

Definitions.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) "explosive"—

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect ; and

(b) includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined ;

(2) "manufacture" includes the process of dividing into its component parts, or otherwise breaking up or

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The Act has also been extended to British Baluchistan by Notification under s. 5 of the Scheduled Districts Act, 1874—*see* Gazette of India, 1931, Pt. II-A, p. 358.

For the law relating to explosive substances, *see* also the Explosive Substances Act, 1908 (6 of 1908).

1. The 1st July, 1887—*see* Gazette of India, 1887, Pt. I, p. 307.
2. Sub-Section (2) of Section 2 was repealed by the Repealing and Amending Act, 1891 (12 of 1891).

unmaking, any explosive, or making fit for use any damaged explosive, and the process of re-making, altering or repairing any explosive ;

(3) "vessel" includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise ;

(4) "carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods or passengers by land, in whatever manner the same may be propelled ;

(5) "master" includes every person (except a pilot or harbour-master) having for the time being command or charge of a vessel : provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship ;

(6) "import" means to bring into British India by sea or land.

Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives.

5. (1) The Governor General in Council may for any part of British India, and each Local Government, with the previous sanction of the Governor General in Council, may for any part of the territories under its administration, make rules[1] consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives.

1. For rules made by the Governor General in Council unde this section see General Rules and Orders, Vol. II, p. 326.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say :—

(a) the authority by which licences may be granted ;

(b) the fees to be charged for licences, and the other sums (if any) to be paid for expenses by applicants for licenses ;

(c) the manner in which applications for licenses must be made, and the matters to be specified in such applications ;

(d) the form in which, and the conditions on and subject to which, licences must be granted ;

(e) the period for which licences are to remain in force ; and

(f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules.

(3) The authority making rules under this section may by the rules impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules :

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

(a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees ;

(b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees ;

(c) in the case of a person so selling an

explosive, a fine which may extend to five hundred rupees ; and

(*d*) in any other case, two hundred rupees.

NOTES.

Offence by Servant—liability of master.—The accused held a licence under the Indian Explosives Act of 1884 to manufacture gunpowder. One of the conditions of that licence was that the explosive should be manufactured in a tent or lightly constructed building exclusively appropriated for the purpose. The accused lived in a village and he constructed a building outside and employed a woman, B to manufacture gunpowder there. One day, B and her assistant, after working there for some time, went with the ingredients necessary for the manufacture of gunpowder to the house of the accused and performed part of the process of manufacture there. An explosion occurred there and the employees were burnt and injured badly. The accused was charged with having committed a breach of the condition of the licence. *Held* that the servant having acted within the general scope of her employment, the accused was criminally liable for his act and was punishable for an offence under R. 138 of the rules under Section 5 of the Indian Explosives Act[1].

6. (1) Notwithstanding anything in the rules

1. *Emperor* v. *Mahadevappa*, 51 Bom. 302=29 Bom. L. R. 153=100 I. C. 972=28 Cr. L. J. 364=A. I. C. R. 489=A. I. R. 1927 Bom. 209.

Power for Governor General in Council to prohibit the manufacture, possession or importation of specially dangerous explosives.

under the last foregoing section, the Governor General in Council may, from time to time, by notification in the Gazette of India,—

(a) prohibit, either absolutely, or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Governor General in Council, it is expedient for the public safety to issue the notification[1] ; * *

[1]* * * * *

(2) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive as they have for the time being in respect of any article, the importation of which is prohibited or regulated by the law relating to sea customs and the vessel containing the same ; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees, and, in the case of importation by water, the owner and master of the vessel, in which the explosive is imported, shall, in the absence of reasonable excuse, each be

1. The word "and" and clause (b) were repealed by the Repealing and Amending Act, 1914 (10 of 1914).

punished with fine which may extend to three thousand rupees.

Power to make rules conferring powers of inspection, search, seizure, detention and removal.

7. (1) The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may make rules consistent with this Act authorising any officer, either by name or in virtue of his office,—(a) to enter, inspect and examine any place, carriage or vessel in which explosive is being manufactured, possessed, used, sold, transported or imported under a licence granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act ;

(b) to search for explosives therein ;

(c) to take samples of any explosive found therein on payment of the value thereof ; and

(d) to seize, detain, remove and, if necessary, destroy any explosive found therein.

X of 1882.

(2) The provisions of the Code of Criminal Procedure[1] relating to searches under that Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section.

Notice of accidents.

8. Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any carriage or vessel

1. *See* now Act V of 1898.

either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life, or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel, or the person in charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer-in-charge of the nearest police-station.

Inquiry into accidents.

9. (1) Whenever, in the opinion of a District Magistrate, Subdivisional Magistrate or any other Magistrate specially empowered by the Local Government in this behalf, an inquiry is necessary into the cause of any accident of the description mentioned in Section 8, he may either himself make the inquiry, or direct a Magistrate subordinate to himself to make the inquiry.

X of 1882.

(2) Any Magistrate making an inquiry under this section shall, for the purposes of conducting the inquiry, have all the powers which he would have in holding an inquiry into an offence under the Code of Criminal Procedure[1].

(3) The powers conferred on a Magistrate by this section may in a Presidency-town be exercised by the Commissioner of Police as well as by any Magistrate specially empowered in this behalf under sub-section (1).

10. When a person is convicted of an offence punishable under this Act, or the rules made under

1. *See* now Act V of 1898.

Forfeiture of explosives.

this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall with the receptacles containing the same, be forfeited.

Distress of vessel.

11. Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Abetment and attempts.

12. Whoever abets, within the meaning of the Indian Penal Code XLV of 1860 the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence.

Power to arrest without warrant persons committing dangerous offences.

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship or boat, may be apprehended

without a warrant by a Police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of that place, or by any agent or servant of, or other person authorized by the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

Saving for manufacture, possession, use, sale, transport or importation by Government.

14. Nothing in this Act shall apply to the manufacture, possession, use, sale, transport or importation of any explosive—

(*a*) by order of the Government, or

(*b*) by any person employed under the Government in the execution of this Act, or as a keeper of a magazine, artizan, soldier, sailor, [airman][1] policeman or otherwise, or enrolled as a volunteer under the Indian Volunteers Act XX, of 1869[1] in the course of his employment or duty as such.

Saving of Indian Arms Act, 1878.

15. Nothing in this Act shall affect the provisions of the Indian Arms Act XI, 1878 :

Provided that an authority granting a licence under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the licence is granted, direct by an order written on the licence that it shall have the effect of a like licence granted under the said Indian Arms Act.

1. This word was inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

Saving as to liability under other law.

16. Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules:

Provided that a person shall not be punished twice for the same offence.

Extension of definition of "explosive" to other explosive substances

17. The Governor General in Council may, from time to time, by notification in the Gazette of India, declare that any substance which appears to the Governor General in Council to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act; and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

Procedure for making publication and confirmation of rules.

18. (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner

as the Governor General in Council, from time to time, by notification in the Gazette of India, prescribes.

(3). There shall be published with the draft, a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect if it is made by the Governor General in Council until it has been published in the Gazette of India, and if it is made by the Local Government until it has been published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

CHAPTER VII.

THE PREVENTION OF CRUELTY TO ANIMALS ACT.

(Act No. XI of 1890.)[1]

An Act for the Prevention of Cruelty to Animals.

21st March, 1890.

Whereas it is expedient to make further provision for the prevention of cruelty to animals; It is hereby enacted as follows :—

Title, extent and commencement, and supersession of other enactments.

1. (*1*) This Act may be called the Prevention of Cruelty to Animals Act, 1890.

(*2*) This section extends to the whole of British India: and the Local Government may, by notification in the official

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1. For Statement of Objects and Reasons, *see* Gazette of India, 1890, Pt. V, p. 4; for Report of the Select Committee, *see ibid*, p. 95; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 4, 10 and 62.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898—Burma Code, Ed. 1899, p. 260). [It had previously been extended there under the Scheduled Districts Act, 1874 (14 of 1874—General Acts, Vol. II, Ed. 1898, p. 467), *see* Gazette of India, 1898, Pt. I, p. 94].

The Act has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (14 of 1874—General Acts, Vol. II, Ed. 1898, p. 467), to British Baluchistan, *see* Gazette of India, 1892, Pt. II, p. 367.

It has been declared in force in the Santhal Parganas by s. 3 of the Santhal Parganas Settlement Regulation (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899)—Bengal Code, Ed. 1905, Vol. I, p. 309.

Gazette, extend[2], on and from a date to be specified in the notification, the whole or any part of the rest of this Act to any such local area as it thinks fit.

(3) When any part of this Act has been extended under sub-section (2) to a local area, the Local Government may, by notification in the official Gazette, direct that the whole or any part of any other enactment in force in the local area for the prevention of cruelty to animals shall, except as regards anything done or any offence committed or any fine or penalty incurred or any proceedings commenced, cease to have effect in the local area, and such whole or part shall cease to have effect accordingly until the Local Government, by like notification, otherwise directs.

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2. As to extension of the rest of the Act to places in—
   (1) Assam, *see* Assam Gazette, 1897, Pt. II, pp. 169 and 170;
   (2) Ajmer-Merwara, *see* Gazette of India, 1897, Pt. II, p. 771;
   (3) Bengal, *see* Calcutta Gazette, 1904, Pt. I, p. 1124;
   (4) the Bombay Presidency, *see* Bombay Local Rules and Orders, Ed. 1896, Vol. I, pp. 544 and 545;
   (5) Burma, *see* Burma Rules Manual, Ed. 1903, Vol. I, pp. 68 and 69
   (6) the Central Provinces, *see* Central Provinces Local Rules and Orders, Ed. 1904, pp. 121 and 122;
   (7) the United Provinces of Agra and Oudh, *see* United Provinces Local Rules and Orders, Ed. 1904, Pt. I, Vol. I, pp. 173 and 178;
   (8) British Baluchistan, *see* Gazette of India. 1901, Pt. II, p. 1010.

(*4*) The Local Government may cancel or vary a notification under sub-section (*2*) or sub-section (*3*).

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "animal" means any domestic or captured animal; and

(*2*) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, to which the public have access.

Penalty for cruelty to animals in public places and for sale in such places, of animals killed with unnecessary cruelty.

3. If any person in any street or in any other place, whether open or closed, to which the public have access, or within sight of any person in any street or in any such other place,—

(*a*)[1] cruelly and unnecessarily beats, overdrives, overloads or otherwise ill-treats any animal, or

(*b*)[2] binds or carries any animal in such a manner or position as to subject the animal to unnecessary pain or suffering, or

(*c*) offers, exposes or has in his possession, for sale, any live animal which is suffering pain by reason of mutilation, starvation or other ill-treatment, or any dead animal which he has reason to believe to have been killed in an unnecessarily cruel manner,

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1. *Cf.* Canadian Statute, 43 Vict., c. 38, s. 2.
2. *Cf. ibid*, and the Cruelty to Animals Act, 1849 (12 & 13 Vict., c. 92), s. 12.

he shall be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both[1].

NOTES.

Sections 2 and 3.—Animals—Crabs—cruelty to animals—

Crabs are "animals" within the definition of Sec. 2 of Act XI of 1890. If a person exposes them for sale at a public place with their legs broken and with their shells crushed in such a way as to cause them pain, he incurs the penalty prescribed by S. 3 of the Act[2].

See also under section 6.

Penalty for practising phúká.

4. If any person performs upon any cow the operation called phúká, he shall be punished with fine which may extend to one hundred rupees, or with impisonment which may extend to three months, or with both.

Penalty for killing animals with unnecessary cruelty anywhere.

5. If any person kills any animal in an unnecessarily cruel manner, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty for employing anywhere, animals unfit for labour.

6. (1) If any person employs in any work or labour, any animal which by reason of any disease, infirmity, wound, sore or other cause is unfit to be so employed,

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1. *Cf.* the Cruelty to Animals Act, 1849 (12 & 13 Vict, c. 92), s. 18.

2. *Tulshi Bewah v. Sweeney*, 24 Cal. 881.

or permits any such unfit animal in his possession or under his control to be so employed, he shall be punished with fine which may extend to one hundred rupees.

(*2*)[1] The Local Government may, by general or special order, appoint places to be infirmaries for the treatment and care of animals in respect of which offences against sub-section (*1*) have been committed.

(*3*) The Magistrate, before whom a prosecution for such an offence has been instituted, may direct that the animal, in respect of which the offence is alleged or proved to have been committed, shall be sent for treatment and care to an infirmary and be there detained until it is, in his opinion, or in the opinion of some other Magistrate, again fit for the work or labour on which it has been ordinarily employed.

(*4*) The cost of the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal according to such scale of rates as the District Magistrate or, in the case of an infirmary in a Presidency-town, the Commissioner of Police may from time to time prescribe.

(*5*) If the owner refuses or neglects to pay such cost and to remove the animal within such time as a

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1. For notifications under this sub-section appointing infirmaries in—

(1) Burma, *see* Burma Rules Manual, Ed. 1903, Vol. I, p. 69.

(2) The United Provinces of Agra and Oudh, *see* United Provinces Local Rules and Orders, Ed. 1904, Pt. I, Vol. I, pp. 177 and 178.

Magistrate may prescribe, the Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(*6*) The surplus, if any, of the proceeds of the sale shall, on application made by the owner within two months after the date of the sale, be paid to him, but the owner shall not be liable to make any payment in excess of the proceeds of the sale.

NOTES.

Section 6 (1) Meaning of 'permits'.—The word "permits" as used in Section 6, Cl. (1), of Act XI of 1890, implies knowledge of that which is permitted[1].

Lean Pony.—A hackney-carriage driver was prosecuted for working a lean pony and using a bridle with a leather disc studded with rails. *Held* that the conviction ought to have been under Sec. 3 of the Act[2].

Penalty for permitting diseased animals to go at large or to die in public places.

7. If any person wilfully permits any animal of which he is the owner to go at large in any street while the animal is affected with contagious or infectious disease, or without reasonable excuse permits any diseased or disabled animal of which he is the owner to die in any street, he shall be punished with fine which may extend to one hundred rupees.

8. (*1*) If a Magistrate of the First class, Sub-divi-

1. *Queen Empress* v. *Lalta Prosad*, 20 All. 186.
2. *Emperor* v. *Bijai*, 3 Bur. L. J. 155=A. I. R. 1924 Rang. 373 (1)

Search-warrants.

sional Magistrate, Commissioner of Police or District Superintendent of Police, upon information in writing and after such inquiry as he thinks necessary, has reason to believe that an offence against Section 4, Section 5 or Section 6 is being or is about to be or has been committed in any place, he may either himself enter and search or by his warrant authorise any police-officer above the rank of a constable to enter and search the place.

(2) The provisions of the Code of Criminal Procedure, 1882[1], relating to searches under that Code shall, so far as those provisions can be made applicable, apply to a search under sub-section (1).

Limitation for prosecutions.

9. A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence.

Destruction of suffering animals.

10. When any Magistrate, Commissioner of Police or District Superintendent of Police has reason to believe that an offence against this Act has been committed in respect of any animal, he may direct the immediate destruction of the animal if in his opinion its sufferings are such as to render such a direction proper.

Saving with respect to religious rites and usases.

11. Nothing in this Act shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect, tribe or class.

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1. *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898), as modified up to 1st April, 1903.

Provision, supplementary to section 1, with respect to extent of Act.

12. Notwithstanding anything in Section 1, Sections 9, 10 and 11 shall extend to every local area in which any section of this Act constituting an offence is for the time being in force.

CHAPTER VIII.

THE PUBLIC GAMBLING ACT III OF 1867.

As modified up to the 1st January, 1905.

CONTENTS.

THE PUBLIC GAMBLING ACT.

Act No. III of 1867[1].

[25th January 1867.]

An Act to Provide for the punishment of public gambling and the keeping of common gaming-houses in the North-Western Provinces of the Presidency of Fort

1 For Statement of Objects and Reasons, *see* Gazette of India, 1866 p. 976; for Report of the Select Committee, *see ibid*, 1867, Supplement. p. 14; and for Proceedings in Council *see ibid*, 1866 p. 662; *ibid*, 1867, pp. 48 and 52.

Short title, the Public Gambling Act, 1867—*see* the Repealing and Amending Act, 1897 (V of 1897), General Acts. Vol. VI.

Act III of 1867 has been declared in force in—

British Baluchistan, by the British Baluchistan Laws Regulation (I of 1890), section 3 (1) [Baluchistan Code, Ed. 1900, p. 60].

It has also been applied to the Agency Territories—*see* the Baluchistan Agency Laws Law, 1890, s. 4 (*1*), *ib.*, pp. 228 and 230.

William and in the Punjab, Oudh[2], [and the Central Provinces][3].

It has been declared by notification, under the Scheduled Districts Act (XIV of 1874), to be in force in the Tarai Parganas [N. W. P. and Oudh Code, Ed. 1892, Appendix, p. xviii]; in the tract of land ceded to the British Government in the year 1863, and lying between the railway station at Satna and the eastern boundary of the Jubbulpore District [General Acts, Vol. II, p. 470].

It was extended, by notification, under the same Act, to the Chief Commissionership of Assam [Assam Code, Ed. 1897, Appendix, p. 745].

It was also extended to Coorg, by notification. under the same Act [Coorg Code, Ed. 1893, Appendix, p. 168]. The powers of a Chief Commissioner under the Act are exercised by the Chief Commissioner of Coorg—*see* paragraph 2 of the notification referred to.

It was extended, by notification of the Lieutenant-Governor of the United Provinces, No. 346-A., dated the 8th June, 1867, to the following towns of Ajmer and Merwara, namely, Ajmer, Bhinar, Kekree, Khurwah, Masuda, Nuseerabad, Nyanagar, Pisangun, Pokar, Ramsur, Sawur and Srinagar—*see* N. W. P. Gazette, dated 31st July, 1867, p. 511.

It has ceased to be operative in Burma, *see* s. 2 of the Burma Gambling Act, 1899 (I of 1899), which extends to the whole of Burma except the Shan States, Burma Code, Ed. 1899, p. 574.

2. The North Western Provinces and the Province of Oudh are now known as the United Provinces of Agra and Oudh—*see* Proclamation No. 996—P., dated 22nd March, 1902, Gazette of India, 1902, Pt. I. p. 228.

3. The words "and the Central Provinces" were substituted for the words the "Central Provinces and British Burma" by the Repealing and Amending Act, 1903 (I of 1903), printed, Bengal Code,

Whereas it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories respectively subject to the Governments of the Lieutenant-Governor of the North-Western Privinces[1] of the Presidency of Fort William, [and][2] of the Lieutenant-Governor of the Punjab, and to the administrations of the Chief Commissioner of Oudh[1], [and of the Chief Commissioner of the Central Provinces][3]; It is hereby enacted as follows :—

Interpretation-clause.

1. In this Act—

"Lieutenant-Governor."

"[Lieutenant-Governor" means the Lieutenant-Governor of the United Provinces of Agra and Oudh or of the Punjab, as the case may be :][4]

Chief Commissionor."

"[Chief Commissioner" means the Chief Commissioner of the Central Provinces or of the North-West Frontier Province, as the case may be :][4]

Vol. I, Ed. 1905. Burma possesses its own Act, the Burma Gambling Act, 1899 (Burma Act I of 1899).

1. Read now the Lieutenant-Governor of the United Provinces of Agra and Oudh—*see* s. 2 of the United Provinces (Designation) Act, 1902 (VII of 1902), General Acts, Vol. VII.

2. The word "and" was inserted by the Repealing and Amending Act, 1891 (XII of 1891), Sch. II, General Acts, Vol. VI.

3. Substituted for the words "of the Chief Commissioner of Lower Burma" by the Repealing and Amending Act, 1903 (I of 1903), s. 3, printed in Bengal Code, Vol I, Ed. 1905.

4. Substituted for the original definition by the Repealing and Amending Act, 1903 (I of 1903), General Acts, Vol. VII, pp. 208 & 209.

"Common gaming-house" means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keepiug such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever :

"Common gaming-house"

Words in the singular include the plural and *vice versa,* and

Number.

Words denoting the masculine gender include females.

Gender.

2. [Sections 13 and 17][1] of this Act shall extend to the whole of the said territories ; and it shall be competent to the Lieutenant-Gevernor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend, by notification to be published in three successive numbers of the official[2] Gazette, all or any of

Power to extend Act.

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1. These words and figures were substituted for the original words and figures by the Repealing and Amending Act, 1891 (XII 1891), Sch. II, General Acts, Vol. VI.

2. Under section 2, the remaining sections of this Act have been extended to a large number of places, in the Punjab, *see* Punjab Rules and Orders, Ed. 1902, p. 23 ; to the Civil Stations of Taunggyi in the State of Yawng Hwe and to the Civil Stations of Lashio in the State of North Hsenwi, *see* Pt. V A of the Burma Code, pp. 616, and 618 Ed. 1899 ; to the Bazaars in the Khojak Pass in British Baluchistan, with

the remaining sections of this Act to any city, town, suburb, railway-station-house and place being not more than three miles distant from any part of such station-house within the territories subject to his Government or administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb or station-house, and, from time to time, to alter the limits so defined.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories, to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

Penalty for owning or keeping, or having charge of, a gaming-house.

3. Whoever, being the owner or occupier, or having the use of any house, walled enclosure, room or place, situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house ; and

whoever being the owner or occupier of any such house, walled enclosure, room or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house ; and

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the exception of sections 6 and 9, *see* notification No. 2569, dated 24th April, 1891, Gazette of India, 1891, Pt. II, p. 278, and Baluchistan Code, p. 121; to several places in the Central Provinces, *see* Central Provinces Rules and Orders, Ed. 1904, pp. 16 to 21, Pt. II; and in the United Provinces of Agra and Oudh, *see* N.-W. P. and Oudh Gazette, 1896, Pt. I, p. 200, and United Provinces Gazette, 1902, Pt. I, p. 351.

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid opened, occupied, used or kept for the purpose aforesaid ; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description[1] as defined in the Indian Penal Code, for any term not exceeding three months.[2]

4. Whoever is found in any such house, walled enclosure, room or place, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description,[1] as defined in the Indian Penal Code, for any term not exceeding one month[2] ;

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

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1. *See* s. 53 of Act XLV of 1860. For Act XLV of 1860, *see* the revised edition, as modified up to the 1st April, 1903, published by the Legislative Department.

2. As to enhanced punishment for a second conviction of an offence under s. 3 or s. 4, *see* s. 15 of this Act.

Note :—The gist of the offence under section 4 of Act III of 1867 consists in the fact that the house in which the gambling takes place is a "common gambling-house."[1] Gambling is not ordinarily punishable as an offence, it is only so punishable when carried on in a "common gambling-house" or in a public street or place.[2] Common gambling-houses are houses in which instruments of gambling are kept or used for the profit or gain of the owner or occupier, whether by way of charge for the use of the instrument of gambling or of the houses, or otherwise howsoever.[3] *See under Section 6.*

5. If the magistrate of a district,[4] or other officer invested with the full powers of a magistrate or the District Superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, walled enclosure, room or place, is used as a common gaming-house.

he may either himself enter, or by his warrant authorize any officer of Police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint[5] in this behalf, to enter, with such

1. *Queen* v. *Khyroo*, 2, N. W. P. 289.
2. *Queen* v. *Sheoshunker Singh*, 3, N. W. P. 1.
3. *Queen* v. *Sujjud Ali*, 3, N. W. P. 134.
4. Read District Magistrate and Magistrate of the first class respectively—*see* Code of Criminal Procedure, 1898 (Act V of 1898), s. 3. [For Act V of 1898, *see* the revised edition, as modified up to 1st April, 1903, published by the Legislative Department.]
5. For notification empowering Inspectors of Police and all officers in charge of Police stations not below the rank of Sub-Inspector in the United Provinces of Agra and Oudh to exercise the power here described, *see* N.-W. P. and Oudh Gazette, 1896, Pt. I, p. 200.

assistance as may be found necessary, by night or by day, and by force if necessary, any such house, walled enclosure, room or place,

and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer find therein, whether or not then actually gaming;

and may seize or authorize such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein;

and may search or authorize such officer to search all parts of the house, walled enclosure, room or place which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

Finding cards, etc., in suspected houses, to be evidence that such houses are common gaming-houses.

6. When any cards, dice, gaming-tables, cloths, boards, or other instruments of gaming[1] are found in any house, walled enclosure, room or place, entered or searched under the provisions of the last preceding section, or about the person of any of those who are

1. *Queen-Empress v. Bhowani*, 18 All. 23.

found therein, it shall be evidence, until the contary is made to appear, that such house, walled enclosure, room or place is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or Police-officer, or any of his assistants.

NOTE.

The "Cowries" are not "instruments of gaming"—within the meaning of S. 6 of Act No. 111 of 1867[1].

Instrument of gaming—Cowries :—

The mere finding of cowries in a house searched in pursuance of a warrant issued under Act III of 1867 would not raise the presumption that the house was used as a common gaming-house, but evidence that cowries mere used in that house as instruments whereby to carry on gaming would bring the house under section 6 of the Act[2].

Penalty on persons arrested for giving false names and addresses.

7. If any person found in any common gaming-house entered by any Magistrate or officer of Police under the provisions of this Act, upon being arrested by any such officer or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the

1. *Queen Empress* v. *Bhowani*, 18 All. 23
2. *Queen Empress* v. *Bhowani*, 18 All. 23.

first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

On conviction for keeping a gaming-house, instruments of gaming to be destroyed.

8. On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

Proof of playing for stakes unnecessary.

9. It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager or stake.

Magistrate may require any person apprehended to be sworn and give evidence.

10. It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, walled enclosure, room or place entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evi-

dence touching any unlawful gaming in such house, walled enclosure, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, walled enclosure, room or place or any part thereof, of any Magistrate or officer authorized as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case may be) of the Indian Penal Code[1].

XLV of 1860

Witnesses indemnified.

11. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examina-

1. For Act XLV of 1860 *see* the revised edition, as modified up to 1st April, 1903, published by the Legislative Department.

tion, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

Act not to apply to certain games.

12. Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.

Gaming and setting birds and animals to fight in public streets.

13. A Police-officer may apprehend without warrant—

any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill, in any public street, place or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such persons when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month ;

and such Police-officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

Destruction of instruments of gaming found in public streets.

Note. The gist of the offence under section 13 is "the gambling in a Public Street or place". Gambling in a private house is not an offence under the Act.[1]

14. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

Offences by whom triable.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure, 1882[2], as to the amount of fine or imprisonment he may inflict.

15. Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act shall again be guilty of any offence punishable under either of such sections shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description;

Penalty for subsequent offence.

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

1. *Queen* v. *Khyroo,* 2 N. W. P. 289.
2. *See* now the Code of Criminal Procedure, 1898 (Act V. of 1898), as modified up to 1st April, 1903.

Portion of fine may be paid to informer.

16. The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the monies or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

Recovery and application of fines.

17. All fines imposed under this Act may be recovered in the manner prescribed by section 61 of the Code of Criminal Procedure, 1882[1], and such fines shall (subject to the provisions contained in the last preceding section) be applied[2] as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall from time to time, direct.

18. *[Offences under this Act to be "offences" within meaning of Penal Code.] Rep. Act XVI of 1874, section 1, and Schedule, Part I.*

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1. *See* now ss. 386, 387 and 389 of Act V of 1898 in the revised edition, as modified up to the 1st April, 1903.
2. As to crediting such fines to municipal funds in the Central Provinces, *see* the Central Provinces Municipal Act, 1903 (XVI of 1903), s. 49 Central Provinces Code, Ed. 1904, p. 383.

CHAPTER IX.

THE OPIUM ACT, 1878.

(Act I of 1878).

As modified up to the 1st April, 1931.

CONTENTS.

15. Power to seize opium in open places.
Power to detain, search and arrest.
16. Searches how made.
17. Officers to assist each other.
18. Vexatious entries, searches, seizures and arrests.
19. Issue of warrants.
20. Disposal of person arrested or thing seized.
21. Report of arrests and seizures.
22. [*Repealed.*]
23. Recovery of arrears of fees, duties, etc.
24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.
25. Recovery of penalties due under bond.

SCHEDULE. [*Repealed.*]

Act No. 1 of 1878.[1]

[*9th January, 1878.*]

An Act to amend the Law relating to Opium.

[As modified up to the 1st April, 1931.]

Preamble. Whereas it is expedient to amend the law relating to opium; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Opium Act, 1878.

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1 For the Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 645 ; for Proceedings in Council, *see ibid*, Supplement, pp. 3015 and 3030 ; *ibid*, 1878, pp. 53 and 80.

Local extent.

It shall extend to such local areas[2] as the Governor General in Council may, by notification in the Gazette of India, from time to time direct;

The Act has been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), B. & O. Code; in British Baluchistan, by the Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3, Bal. Code; and in the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3, B. & O. Code.

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s. 4 (*1*), Sch. I, Bur Code.

It has been declared in force in the Arakan Hill District by s. 2 of Reg. I of 1916, Bur. Code.

The Act is supplemented in Burma by the Burma Opium Law Amendment Act, 1909 (Bur. Act 7 of 1909). Bur. Code.

2. It has been extended by notification in the Gazette of India to the following local areas from the date specified against each :—

(*1*) Ajmer-Merwara, from 2nd August, 1879, *see* Gazette of India 1879, Pt. I, p. 466; *see* also Aj. R. and O.;

(*2*) Assam, from 1st April, 1879, *see ibid*, p. 259;

(*3*) Bengal (which then included the present Province of Bihar and Orissa), from 21st August, 1878, *see* Gazette of India, 1878, Pt. I, p. 526 ;

(*4*) Bombay Presidency, from 1st April, 1878, *see ibid*, p. 231 ;

(*5*) Central Provinces, from 28th June, 1879, *see ibid*, 1879, Pt. I, p. 441 ;

(*6*) Coorg, from 1st April, 1882, *see ibid*, 1882, Pt. I, p. 135 ;

(7) Lower Burma, from 29th March, 1879, *see ibid*, 1879, Pt. I, p. 75 ;

Commencement.

'And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf.

2. [*Repeal and amendment of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891), and the Repealing and Amending Act, 1894 (IV of 1894).*

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context,—

[1]['opium' means—

(*i*) the capsules of the poppy (*Papaver Somniferum* L.);

(*ii*) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and

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(8) Madras Presidency, from 1st July, 1880, *see ibid*, 1880, Pt. I, p. 293;

(9) the Punjab, from 1st April, 1880, *see ibid*, 1880, Pt. I, p. 16; and

(10) United Provinces of Agra and Oudh, from 2nd February, 1878, *see ibid*, 1878 Pt. I, p. 68.

The Act has been extended under s. 10 (1) of the Burma Laws Act, 1898 (13 of 1898). to the Myelat, *see* Burma Gazette, 1927, Pt. I, p. 242, and the whole Act, with the exception of ss. 6-8 and 22-25, has been extended to the Taunggyi Civil Station in the Southern Shan States and the Lashio Civil Station in the Northern Shan States, respectively, with certain modifications, *see* Bur Gazette, 1900, Pt. I, pp. 478 and 799, respectively.

1. This definition was substituted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).

(*iii*) any mixture, with or without neutral materials, of any of the above forms of opium,

but does not include any preparation containing not more than 0·2 per cent. of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930 ;]

2 of 1930.

"Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered[1] by the Local Government to try cases under this Act) a Magistrate of the second class ;

[2]['import' means to import inter-provincially, as defined in clause (*j*) of section 2 of the Dangerous Drugs Act, 1930 ;

2 of 1930.

'export' means to export-inter provincially, as defined in clause (*l*) of section 2 of the Dangerous Drugs Act, 1930 ; and]

"transport" means to remove from one place to another within the territories administered by the same Local Government.

NOTES.

One having a license for the possession of opium as a medical practitioner, limited to eight pollums of opium, sent his servant to buy from a licensed dealer at Sholavaram, and bring to Madras four pollums of

1. For notification empowering Magistrates of the 2nd class in Madras to try cases under the Act, *sec* Madras Local Rules and Orders, edition 1923.
2. These definitions were substituted by s. 40 and Sch. of the Dangerous Drugs Act, 1930 (2 of 1930).

opium. He was convicted of the offence of transporting opium without a license. Held, the conviction was right[1].

Prohibition of poppy cultivation and possession, etc., of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

[2]* * * *

[3][(a)] possess opium ;

[3][(b)] transport opium ;

[3][(c)] import or export opium ; or

[3][(d)] sell opium.

Power to make rules to permit such matters.

5. The Local Government, [subject to the control][4] of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules[5] consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

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1. *Q. E.* vs. *Ramanujam*. 13 Mad. 191.
2. Original clauses (*a*) and (*b*) were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).
3. Original clauses (*c*), (*d*), (*e*), (*f*) were re-lettered. *ibid.*
4. These words were substituted for the words "with the previous sanction" by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).
5. For rules made under this section *see* different local Rules and Orders.

[1]* * * *

[2][(*a*)] the possession of opium ;

[2][(*b*)] the transport of opium ;

[2][(*c*)] the importation or exportation of opium ; and

[2][(*d*)] the sale of opium, and the farm of duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law[3] relating to sea-customs for the time being in force or under [the Dangerous Drugs Act, 1930][4].

NOTES.

There is nothing in any of the rules made under section 5 of the Act which would make the preparation of an incorrect account punishable under Section 9[5].

6. [*Duty on opium imported by land.*] *Rep by the Dangerous Drugs Act, 1930 (2 of 1930).*

Warehousing opium.

7. The Governor General in Council may, by order notified in the Gazette of India,—

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1. Original clauses (*a*) and (*b*) were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).
2. Original clauses (*c*), (*d*), (*e*), (*f*) were re-lettered. *ibid.*
3. *See* the Sea Customs Act, 1878 (8 of 1878) (Chapter VIII).
4. These words and figures were substituted for the word and figure "section 6" by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).
5. *Umesh Chunder Ghose* vs. *Q. E.* 26 Cal. 571. and *Maiku Lall* vs. *E.* 64 I. C. 135=22 Cr. L. J. 743=24 O. C. 235.

(a) authorize any Local Government to establish[1] warehouses, for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

(b) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, intended to be exported thence, and

(d) cancel any such declaration.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

8. The Local Government, [subject to the control][2] of the Governor General in Council, may, from

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1. For notification authorizing the Government of Bombay to establish a warehouse under this section, *see* Bom. Local R. and O.

2. These words were substituted for the words "with the previous sanction" by s. 2 and Sch. I. of the Devolution Act, 1920 (38 of 1920).

Power to make rules relating to warehouses.

time to time, by notification in the local Gazette, make rules[1] consistent with this Act to regulate the safe custody of opium warehoused under Section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, etc.

[2]9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

[3]* * * *

[4][(*a*)] possesses opium, or

[4][(*b*)] transports opium, or

[4][(*c*)] imports or exports opium, or

[4][(*d*)] sells opium, or

[4][(*e*)] omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule, shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine

1. For rules issued under this section in Bombay, *see* Bombay Opium Manual; in Punjab *see* Punjab Gazette, 1911, Pt. I, p. 496.

2. For the amendment of s. 9 in its application to the Punjab, *see* Pun. Act 3 of 1925.

3. Original clauses (*a*) and (*b*) were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).

4. Original clauses (*c*), (*d*), (*e*), (*f*), (*g*) were re-lettered by s. 40 and Sch. II of Dangerous Drugs Act, 1930 (2 of 1930).

which may extend to one thousand rupees, or with both ;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

NOTES.

Sale by Servants :—Contrary to the conditions of his master's opium license, the servant sold a preparation of opium between sun-set and sun-rise. The master was not present, and there was no evidence to show that he had directly or otherwise authorized the illegal sale. *Held*, that the master was not liable to a penalty under section 9 of Act I of 1878.[1]

Export :—A person who exports from outside the United Provinces opium to a warehouse, inside the United Provinces, of which he is really the proprietor or temporary possessor, is in fact, commits an offence under the act.[2]

Preparation :—The word "preparation" in R. 37 (d) of the Excise Rules framed under the opium Act designates a completed or manufactured article and not an article in process of manufacture, the test being whether the stage has been reached at which it can be used [3]

NOTES.

Possession :—Where the place in which the opium was found, is one to which several persons had equal right to access, it is unsafe to Convict one of them for illegal possession of opium.[4]

1. In re Bhoobun Chunder Shaw. 11 C. L. R. 464.
2. *E.* vs. *Gobind Ram.* 46 All. 146=L. R. 5A, 46 (Cr)=81 I. C. 100=25 Cr. L. J. 612=A. I. R. 1924 All. 558.
3. *M. T. Hamiri* vs. *E.* 4 Lah. 12=73 I. C. 700=24 Cr. L. J ; 668=A. I. R. 1924 Lah. 99.
4. *Khusi Ram Maharaj* vs. *E.* 3 Pat. L. J. 132=23 Cr. L. J. 264=A. I. R. 1922 Pat. 387 (1).

Presumption in prosecutions under section 9.

10. In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

11. In any case in which an offence under section 9 has been committed,—

[1]* * *

[2][(*a*)] the opium in respect of which any offence under the same section has been committed,

[2][(*b*)] where, in the case of an offence under clause [3][(*b*) or (*c*)] of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

[2][(*c*)] where, in the case of an offence under clause [4][(*d*)] of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

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1. Original clause (*a*) was omited, *ibid.*
2. Original clauses (*b*), (*c*), (*d*) were re-lettered, *ibid.*
3. This was substituted for "(*d*) or (*e*)", *ibid*
4. This was substituted for "(*f*)", *ibid.*

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The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of confiscation by whom to be made.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the district or deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

NOTES.

Confiscation of car used in smuggling :—An order of confiscation under section 12 in respect of a motor car used in smuggling opium is illegal unless an oppertuanity is given to the owner of the car to prove that he had no knowledge or reason to believe that it was used for smuggling.[1]

Power to make rules regarding disposal of things confiscated, and rewards.

13. The Local Government may,[2] * * * from time to time, by notification in the local Gazette, make rules[3] consistent with this Act to regulate—

(*a*) the disposal of all things confiscated under this Act ; and

(*b*) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government[4] in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down

1. *Mangan Das* vs. *Rahim Bux.* 2 Pat. L. T. 63=69 I. C. 685=23 Cr. L. J. 747=1 Pat. L. R. 32 (Cr).
2. The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).
3. *See* List of rules noted under s. 5, *supra*, which were made also under the powers conferred by this section.
4. For notification conferring powers on officials of the class referred to, *see* different local Rules and Orders.

in writing, that opium liable to confiscation under this Act is [1]* kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

(a) enter into any such building, vessel, or place ;

(b) in case of resistance, break open any door and remove any other obstacle to such entry ;

(c) seize such opium [2]* * * * and any other thing which he has reason to believe to be liable to confiscation under Section 11 or any other law for the time being in force relating to opium ; and

(d) detain and search, and if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places.

15. Any officer of any of the said departments may—

(a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ;

Power to detain, search and arrest.

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in

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1. The word "manufactured" was omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (2 of 1930).

2. The words "and all materials used in the manufacture thereof" were omitted; *Ibid.*

his possession, arrest him and any other persons in his company.

Searches how made.

16. All searches under Section 14 or Section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure[1].

Officers to assist each other.

17. The officers of the several departments mentioned in Section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious entries, searches, seizures and arrests.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

19. The Collector of the district, Deputy Commissioner or other[2] officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magis-

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1. *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

2. *See* foot-note to s. 14, *supra*.

trate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure[1].

Disposal of person arrested or thing seized.

20[2]. Every person arrested, and thing seized, under Section 14 or Section 15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under Section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law, of such person or thing.

Report of arrests and seizures.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

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1. *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898.)
2. For substituted Sections 20, 20A, 20B, 20C, as in force in the Bombay Presidency, *see* Bom. Act 2 of 1923, s. 3, and Bom. Act 14 of 1930; for substituted sections in force in the Central Provinces, *see* C. P. Act 1 of 1929.

22. [*Procedure in case of illegal poppy cnltivation.*] *Rep. by the Dangerous Drugs Act, 1930 (2 of 1930).*

Recovery of arrears of fees, duties, etc.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

Farmer may apply to Collector or other officer to recover amount due to him by licensee.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other[1] officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such Collector, [Deputy Commissioner][2]

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1. *See* foot-note to s. 14, *supra*.
2. The words "Deputy Commissioner" were substituted for the words "Deputy Collector" by the Repealing and Amending Act, 1891 (12 of 1891), Sch. II.

or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of penalties due under bond.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed by Act XII of 1891.

CHAPTER X.

THE REFORMATORY SCHOOLS ACT 1897.

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ACT No. VIII of 1897.

An Act to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders.

(*Received the assent of the Governor-General on the 11th March, 1897.*)

Passed by the Governor-General of India in Council.

Whereas it is expedient to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders; It is hereby enacted as follows :—

I. Preliminary.

Title, commencement and extent. 1. (*1*) This Act may be called the Reformatory Schools Act, 1897 ; and

(*2*) It shall come into force at once.

(*3*) This section and Section 2 shall extend to the whole of British India. The other sections shall ex-

tend in the first instance to the whole of British India except the territories for the time being administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of Coorg, but either of the said Local Governments may at any time, by notification in the local official Gazette, extend these sections to their territories from such day as may be fixed in any such notification.

Repeal of Act V of 1876.

2. (1) The Reformatory Schools Act, 1876, is hereby repealed.

(2) But all proceedings taken, orders passed, officers appointed or authorised and rules made under the said Act shall, as far as may be, be deemed to have been respectively passed, appointed or authorised and made under this Act.

(3) Any enactment or document referring to the said Act shall, as far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

Section 399 of Act X of 1882 repealed on date fixed by a notification under Section 1, sub section (3).

3. From the date fixed by any notification issued under Section 1, sub-section (3), Section 399 of the Code of Criminal Procedure 1882, shall be repealed in the province to which the notification relates.

Definitions.

4. In this Act, unless there is anything repugnant in the subject or context,—

(a) "youthful offender" means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years :

(*b*) "Inspector General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector General : and

(*c*) "District Magistrate" shall include a Chief Presidency Magistrate.

NOTES.

A boy of 16 is not a youthful offender[1].

II. Reformatory Schools.

Power to establish and discontinue Reformatory Schools.

5. With the previous sanction of the Governor-General in Council, the Local Government may—

(*a*) establish and maintain Reformatory Schools at such places as it may think fit ;

(*b*) use as Reformatory Schools, schools kept by persons willing to act in conformity with such rules, consistent with this Act, as the Local Government may prescribe in this behalf ;

(*c*) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

Requisites of schools.

6. Every school so established or used must provide—

(*a*) sufficient means of separating the inmates at night ;

(*b*) proper sanitary arrangements, water-supply, food, clothing and bedding for the youthful offenders detained therein ;

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1. *Hamid* v. *E.* 2 Bur. L. J. 96=24 Cr. L. J. 918=75. I. C. 294= A. I. R. 1924 Rang. 16.

(*c*) the means of giving such youthful offenders industrial training;

(*d*) an infirmary or proper place for the reception of such youthful offenders when sick.

Inspection of Reformatory Schools

7. (*1*) Every School intended to be established or used as a Reformatory School shall, before being used as such, be inspected by the Inspector General, and if he finds that the requirements of Section 6 have been complied with, and that, in his opinion, such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the local official Gazette, together with an order of the Local Government establishing the school as a Reformatory School or directing that it shall be used as such, and the school shall thereupon be deemed to be a Reformatory School.

(2) Every such school shall, from time to time, and at least once in every year, be visited by the said Inspector General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may prescribe.

Power of Courts to direct youthful offenders to be sent to Reformatory Schools.

8. (*1*) Whenever any youthful offender is sentenced to transportation or imprisonment, and is, in the judgment of the Court by which he is sentenced, a proper person to be an inmate of a Reformatory School, the Court may, subject to any rules made by the Local Government, direct that, instead of undergoing his sentence, he shall be sent to such a school,

and be there detained for a poriod which shall be not less than three or more than seven years.

(2) The powers so conferred on the Court by this section shall be exercised only by (a) the High Court, (b) a Court of Session, (c) a District Magistrate, and (d) any Magistrate specially empowered by the Local Government in this behalf, and may be exercised by such Courts whether the case comes before them originally or on appeal.

(3) The Local Government may make rules for—

(a) defining what youthful offenders should be sent to Reformatory Schools, having regard to the nature of their offences of other considerations, and

(b) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other consideration.

Notes.—The sending of first youthful offenders, whose antecedents are not shown to be bad, to ordinary jails, has the effect of making them hardened criminals after they are discharged from such jails.

There are other suitable forms of punishment provided by the law. The provisions of Reformatory Schools Act are intended for cases of youthful offenders[1].

Power of High Court on revision—

Under Section 439 (1) Cr. P. C. the High Court has the power to pass an order under sub-section 2 of Section 8 of the Reformatory School Act not only on appeal but also in revision[2].

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1. *E.* v. *Dharam Prakash,* 96 I. C. 390 (2). 27 Cr. L. J. 934 (2). A. I. R. 1926 Lah. 611.
2. *E.* v. *Lakshman Naran.,* 30 Bom. L. R. 952. A. I. R. 1928 Bom. 348.

Procedure where Magistrate is not empowered to pass an order under Section 8.

9. (1) When any Magistrate not empowered to pass an order under the last foregoing section is of opinion that a youthful offender convicted by him is a proper person to be an inmate of a Reformatory School, he may, without passing sentence, record such opinion and submit his proceedings and forward the youthful offender to the District Magistrate to whom he is subordinate.

(2) The Magistrate to whom the proceedings are so submitted may make such further inquiry (if any) as he may think fit and pass such sentence and order for the detention in a Reformatory School of the youthful offender, or otherwise, as he might have passed if such youthful offender had been originally tried by him.

Power of Magistrates to direct boys under fifteen sentenced to imprisonment to be sent to Reformatory Schools.

10. The officer in charge of a prison in which a youthful offender is confined, in execution of a sentence of imprisonment, may bring him, if he has not then attained the age of fifteen years, before the District Magistrate within whose jurisdiction such prison is situate; and such Magistrate may, if such youthful offender appears to be a proper person to be an inmate of a Reformatory School, direct that, instead of undergoing the residue of his sentence, he shall be sent to a Reformatory School, and there detained for a period which shall be subject to the same limitations as are prescribed by or under section 8, with reference to the period of detention thereby authorised.

Preliminary enquiry and finding as to age of youthful offender.

11. (1) Before directing any youthful offender to be sent to a Reformatory School under Section 8, Section 9 or Section 10, the Court or Magistrate shall inquire into the question of his age and, after taking such evidence (if any) as may be deemed necessary, shall record a finding thereon, stating his age as nearly as may be.

(2) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order under Section 8 before submitting his proceedings and forwarding the youthful offender to the District Magistrate as required by Section 9, sub-section (1).

Notes.—Section 11 requires that an enquiry as to age should be held before sending a youthful offender to a Reformatory School. There must be a clear finding as to age. The period of detention in the Reformatory School must also be fixed[1].

Government to determine Reformatory School to which such offenders shall be sent.

12. Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may, by general or special order, appoint for the reception of youthful offenders so dealt with by such Court or Magistrate :

Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender, he may be detained in the juvenile ward or such other suitable part of a prison as the Local Government may direct—

1. *E. v. Seton Choung*, 3 Rang. 218 = A. I. R. 1925 Rang. 303.

(a) until he can be sent to a Reformatory School, or

(b) until the term of his original sentence expires,

whichever event may first happen. Should the term of his original sentence first expire, he shall thereupon be released, but, should he be sent to a Reformatory School, then the period of detention previously undergone shall be treated as detention in a Reformatory School.

Persons found to be over eighteen years not to be detained in Reformatory Schools.

13. (1) If at any time after a youthful offender has been sent to a Reformatory School it appears to the Committee of Visitors or Board of Management, as the case may be, that the age of such youthful offender has been understated in the order for detention, and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for the orders of the Local Government.

(2) No person shall be detained in a Reformatory School after he has been found by the Local Government to have attained the age of eighteen years.

Discharge or removal by order of Government.

14. The Local Government may at any time order any youthful offender—

(a) to be discharged from a Reformatory School;

(b) to be removed from one Reformatory School to another such school situate within the territories subject to such Government: Provided that the whole

period of his detention in a Reformatory School shall not be increased by such removal.

Power to Governor-General in Council to direct use of Reformatories in one province for reception of youthful offenders from another.

15. (1) The Governor General in Council may by general or special order direct that any Reformatory School situated in one province shall be available for the reception of youthful offenders directed to be sent to any Reformatory School by any Court or Magistrate in any other province.

(2) Any such order may also provide for the removal of the youthful offender, and the cost of his maintenance, and may give any such further directions as may be necessary.

Certain orders not subject to appeal or revision.

16. Nothing contained in the Code of Criminal Procedure, 1882, shall be construed to authorise any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender or the substitution of an order for detention in a Reformatory School for transportation or imprisonment.

III.—Management of Reformatory Schools.

Appointment of superintendent and Committee of Visitors or Board of Management.

17. (1) For the control and management of every Reformatory School, the Local Government shall appoint either (a) a Superintendent and a Committee of Visitors, or (b) a Board of Management.

(2) Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India.

(3) The Local Government may suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

Superintendent may license youthful offenders to employers of labour.

18. (1) Every Superintendent so appointed may, with the sanction of the Committee, by license under his hand, permit any youthful offender sent to a Reformatory School, who has attained the age of fourteen years, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a Municipality, being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such youthful offender employed at some trade, occupation or calling.

(2) The license shall be in force for three months and no longer, but may, at any time and from time to time until the expiration of the period for which the youthful offender has been directed to be detained be renewed for three months at a time.

Concellation of license.

19. The license shall be cancelled at the desire of the employer named in the license.

Determination of license.

20. If during the term of the license the employer named therein dies, or ceases from business or to employ labour, or the period for which the youthful offender has been

directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

Cancellation of license in case of illtreatment.

21 If it appears to the Superintendent that the employer has ill-treated the youthful offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

Superintendent to be deemed guardian of youthful offenders.

22 (1) The Superintendent of a Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX of 1850 (*concerning the binding of apprentices*).

Power to apprentice youthful offender

(2) If it appears to the Superintendent that any youthful offender licensed under section 18 has behaved well during one or more periods of his license, the Superintendent may, with the sanction of the Committee, apprentice him under the provisions of the said Act, and on such apprenticement the right to detain such youthful offender in a Reformatory School shall cease and the unexpired term (if any) of his sentence shall be cancelled.

Duties of Committee Visitors.

23. (1) Every Committee of Visitors appointed under section 17 for a Reformatory School shall, at least once in every month,—

(*a*) visit the school, to hear complaints and see that the requirements of section 6 have been complied with, and that the management of the school is proper in all respects ;

(*b*) examine the punishment-book ;

(*c*) bring any special cases to the notice of the Inspector General ; and

(*d*) see that no person is illegally detained in the school.

(*2*) If any member of a Committee of Visitors so appointed fails or neglects, during a period of six consecutive months, to visit the school and assist in the discharge of the duties aforesaid, he shall cease to be a member of such Committee.

Power of Board of Management.

24. If, in exercise of the power conferred by section 17, the Local Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections 18 to 22, both inclusive ; and the license mentioned in section 18 may be under the hand of their chairman ; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

Power to appoint trustees or other Managers of a school to be a Board of management.

25. The Local Government may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section 5, clause (*b*), to be a Board of Management under this Act, and thereupon

such body or Managers shall have all the powers and perform all the functions of such Board of Management.

Power of Board to make rules.

26. (1) With the previous sanction of the Local Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act—

(i) to prescribe the articles which are to be deemed to be "prohibited article"; and

(ii) to regulate—

(a) the conduct of business of the Board ;

(b) the management of the school ;

(c) the education and industrial training of youthful offenders ;

(d) visits to, and communication with, youthful offenders ;

(e) the terms and conditions under which any articles declared by the Board to be "prohibited articles" may be introduced into or removed out of the school ;

(f) the manner in which such articles are to be removed when introduced without due authority ;

(g) the conditions and limitations under which such articles may be supplied outside the school to any youthful offender under order of detention therein ;

(h) the conditions on which the possession by any such youthful offender of such articles may be sanctioned ;

(i) the penalties to be imposed for the supply or possession of such articles when supplied or possessed without due authority;

(j) the punishment of offences committed by youthful offenders; and

(k) the granting of licenses for the employment of youthful offenders.

(2) In the absence of a Board of Management the Local Government may make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in any clause of sub-section (1), other than clause (ii) (a), and also the mode in which the Committee of Visitors shall conduct their business.

Offences in relation to Reformatory Schools.

Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders.

27. Whoever, contrary to any rule made under section 26, introduces or removes or attempts by any means whatever to introduce or remove into or from any Reformatory School, or supplies or attempts to supply outside the limits of any Reformatory School to any youthful offender under order of detention therein, any prohibited article,

and every officer or person in charge of a Reformatory School who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any Reformatory School, to be possessed by any youthful offender detained therein, or to be supplied to any such youthful offender outside its limits,

and whoever, contrary to any such rule, communicates or attempts to communicate with any such youthful offender,

and whoever abets any offence made punishable under this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

Penalty for abetting escape of youthful offender.

28. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such youthful offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two hundred rupees, or with both.

Arrest of escaped youthful offender.

29. A Police-officer may, without orders from a Magistrate and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school or from his employer, and take him back to such school or to his employer.

V.—*Miscellaneous.*

Application of Act XV of 1869 to youthful offenders detained in Reformatory Schools.

30. The provisions of the Prisoners' Testimony Act, 1869, shall be applied, so far as they can be made applicable, to youthful offenders detained in Reformatory Schools as if they were persons confined in jail within the meaning of that Act.

31. (1) Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to transportation or imprisonment or directing him to be detained in a Reformatory School, order him to be—

Power to deal in other ways with youthful offenders including girls.

(a) discharged after due admonition, or

(b) delivered to his parent or to his guardian or nearest adult relative, on such parent, guardian or relative executing a bond with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months.

(2) For the purposes of this section the term "youthful offender" shall include a girl.

(3) The powers conferred on the Court by this section shall be exercised only by Courts empowered by or under section 8.

(4) When any youthful offender is convicted by a Court not empowered to act under this section and the Court is of opinion that the powers conferred by this section should be exercised in respect of such youthful offender, it may record such opinion and submit the proceedings and forward the youthful offender to the District Magistrate to whom such Court is subordinate.

(5) The District Magistrate to whom the proceedings are so submitted may thereupon make such order or pass such sentence as he might have made or passed if the case had originally been tried by him.

NOTES.

Section 31 of the Act is applicable to the case of a minor girl found guilty, even of murder[1].

Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced.

32. When a youthful offender during his period of detention in a Reformatory School is again convicted by a Criminal Court, the sentence of such Court shall commence at once, notwithstanding anything to the contrary in section 397 of the Code of Criminal Procedure, 1882, but the Court shall forthwith report the matter to the Local Government, which shall have power to deal with the matter in any way in which it thinks fit.

CHAPTER XI.

NOTES

ON

The Explosive Substances Act (VI of 1908).

Sanction—Possession.

The sanction of the Local Government for the trial of an offence under the Explosive Substances Act, is not required in the stage of the Magisterial enquiry, but sanction must be obtained before the case proceeds to trial in the Court of Session [2]. Where

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1. *Parbati* v. *E.* 65 I. C. 609=24 O. C. 305=28 Cr. L. J.=145.
2. *Emperor* v. *Nathu Ram*, 57 All. 398=A. I. R. 1934. All. 932.

certain persons formed a conspiracy with anarchical designs and the evidence showed that the accused was temporarily residing in the house where the conspirators met and where explosive articles were stored. *Held.* That the accused was liable to be convicted under section 5 of the Explosives Act[1]. Not only does the term "possession imply knowledge, but the expression "maliciously," as used in section 4 connotes intention. But neither knowledge nor intention as to the use to be made of an object, can be imputed to a person who is not conscious of its existence[2].

NOTES.

ON

The Press and Registration of Books Act. (Act XXV of 1867).

Condition of Press.—The press that is referred to in section 13 is a press for the printing of books and papers, and so in order to sustain a conviction under section 13 it is necessary to find that the press was in a sufficiently fit condition to enable the printing of books or papers thereby[3].

It is for the prosecution to establish that the press was one which required a declaration and in order to

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1. *Hari Narayan Chandra* v. *Emperor*, 46 C. L. J. 368.
2. *Dula Singh* v. *Emperor*, 9 Lah. 531=10 Lah. L. J. 408=29 Punj. L. R. 629=29 Cr. L. J. 481=10 A. I. Cr. R. 235=109 I. C. 209=A. I. R. 1928 Lah. 272.
3. *Benoy Kumar Sen* v. *Emperor*, 34 C. W. N. 143=1929 Cr. C. 401 (1)=A. I. R. 1929 Cal. 635.

do so the prosecution must prove that it was in a workable order[1].

Declaration—Presumption. A declaration made under section 4 of the Press Act is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the Press on a person. Where a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive, it is not one of law but of fact, and it is open to the accused to rebut it[2].

NOTES.

Delivering copies of book to Government.

Section 9 (a) of the Press and Registration of Books Act of 1867 directs a publisher to deliver copies of the book, printed and "delivered out of the Press," at a place prescribed by the Government. Where copies of the book were printed in December 1925, but they remained in the Press for binding, etc., and were not sent out of the press till January when

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1. *Benoy Kumar Sen* v. *Emperor*, 34 C. W. N. 143 = 1929 Cr. C. 401 (1) = A. I. R. 1929 Cal. 685.
2. *Emperor* v. *Sankar Shri Krishna Dev*, 35 Bom. 55.

copies were sent to the Government. *Held*, that no offence was committed[1].

Presumption as to Editor and Printer of Newspaper.—Under section 7 of the Press and Registration of Books Act (as amended by the Press Law Repeal and Amendment Act) the entry of the name of the Editor as such on a newspaper is sufficient evidence that on the day that newspaper was published the person bearing that name was Editor of the paper. The remedy to correct a mistake as regards such declaration is prescribed by section 8-A of the Act. The same rule applies to a printer and publisher. The onus rests on the person pleading he is not the Editor or Printer to prove that in fact he was not so[2].

Section 7 of Act XXV of 1867 makes the printer or publisher responsible for everything appearing in the newspaper whoever the author of the seditious articles may be, unless he can prove absence from the office of the paper in good faith and without knowledge that during his absence seditious matter would be published[3].

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1. *Kishen Lall* v. *Emperor*, 49 A. 315=25 A. L. J. 105=8 L. R. 31 (2) (Cr.)=99 I. C. 1032=28 Cr. L. J. 232=7 A.I.C.R. 208=A. I. R. 1927 All. 237.
2. *Nageswar Prasad Sharma* v. *Emperor*, 9 Pat. L. T. 766.
3. *Emperor* v. *Phanendra Nath Mitter*, 35 Cal. 945.

NOTES.

ON

The Factories Act—(XII of 1911).

NOTES.

Act prohibited by the Act : When offence Completed.

The act which is prohibited by sec. 22, Factories act, consists in—employing persons on Sunday without (*a*) giving them a compensation holiday and (*b*) giving notice to the Inspector, and (*c*) putting up a notice in the place mentioned in sec. 36. If a manager violates one of the conditions, the offence is complete but if he violates all the three conditions, there is still only one offence[1].

Overtime work.—Where men are found working during a time which is out side the time fixed, the owner is guilty under section 26, of the Factories Act[2].

Accidents.—The Manager is primarily responsible for reporting accidents. The manager as well as the occupier are jointly and severally liable to fine for the offence under section 41 (J), of the Act[3].

Section 18 (2). Service of notice.—Procedure as to service of notice or order should be strictly followed, mere knowledge is not enough visit note by the Inspector is not an order[4].

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1. In Re. Vonka Venkataratnam. A. I. R. 1935 Mad. 301=41. L. W. 497=1935 M. W. N. 326=1935 Cr. C. 390.
2. A. I. R. (1930) All. 214.
3. A. I. R. (1930) Lah. 658.
4. *Narayan Anant Desai* v. *King Emperor*, 26 B. L. R. 1245= A. I. R. 1925 Bom. 143.

Sections 24 and 27.

Employment of woman during night.—An owner of a factory is prohibited from employing women for night work except with the sanction of the Inspector of Factories. (vide sections 24 and 27 of the Factories Act). But the Inspector has no right to issue a general order prohibiting the employment of women on night duty[1].

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1. *Cocolan v. Emperor*, 19 A. L. J. 503 = 3 U. P. L. R. All. 83 = 22 Cr. L. J. 369 = 61 I. C. 225 = L. R. 2 All. (Cr.) 70.

PART V

A SUMMARY OF THE LAW OF EVIDENCE ORDINARILY APPLICABLE TO CRIMINAL CASES.

PART V

CHAPTER I

PRESUMPTION OF INNOCENCE OF THE ACCUSED.

Presumption of innocence of the accused :—In every criminal case the accused should be considered to be innocent and there can be no conviction unless guilt is established with very great clearness. This presumption of innocence of the accused signifies no more than this that where the commission of a crime is directly in issue in any proceeding, it must be proved beyond reasonable doubt.[1]

In order to justify the inference of guilt, the inculpatory facts must be incompatiable with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. A man's guilt is to be established by proof of the fact and not by proof of his character. Such evidence might create a prejudice but does not go a step towards substantiation of guilt. The strength of the presumption of innocence varies according to the seriousness of the charge, the greater the crime the stronger is the proof required for conviction—where there is a conflict between presumption of innocence and any other presumption, the presumption of innocence prevails[2] and the accused is entitled to the *benefit of doubt*.

1. *Amrita Lal Hazra* vs. *Emp.* 21 C. L. J. 331=32 Cal. 957=19 C. W. N. 676=16 Cr. L. J. 497=29 I. C. 513.
2. *Ashraf Ali* v. *E.* 21 C. W. N. 1152.
   Weston v. *Peary Mohon Das* 40 Cal. 898.

CHAPTER II

FIRST INFORMATION—ITS VALUE AS EVIDENCE.

First information—its value as evidence :—The first information report against the accused is not a statement within the contemplation of section 162 of the Criminal Procedure Code, as it is not made in the course of an investigation.

Proof :—

The first informations do not prove themselves and have to be tendered under one or other of the provisions of the Evidence Act. The usual course is for the prosecution to call the informant to prove the first information. It is to be tendered as corroborative evidence under section 157 of the Evidence Act, but it can also be tendered in a proper case under section 32 (1) of the Evidence Act, as a declaration as to the cause of the informant's death, or as part of the informant's conduct under section 8. Theoretically the defence can prove the information to impeach the informant's credit under section 155 or to contradict him under section 145 of the Evidence Act.[1]

For what is First Information report—see pages 40-41.
For value of the First Information report—see pp. 42-43.
For rules as to the Preparation of F. I. R.—see pp. 46-48.
For Form of F. I. R. and how it is written—see pp. 49-51.

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1. *Azimaddy and others* vs. *Emp.* 44 C. L. J. 253.

CHAPTER III

ADMISSIONS AND CONFESSIONS.

Admissions :—An admission is a statement, oral or documentary which suggest any inference as to any fact in issue or relevant fact.[1]

Admission before Police :—Admission by an accused to a Police Officer may be admissible under sec. 17 of the Indian Evidence Act. Broadly speaking, a statement made by an accused to a Police Officer may be proved against him under the Evidence Act if it is not a confession, and even if it is a part of a confession it is admissible under sec. 27 of the Evidence Act if a fact is deposed to as discovered in consequence of the information received from any person accused of any offence. Sec. 162 of the Criminal Procedure Code does not disturb this position. *'Confessions' are sub-species of 'statements' and a species 'admissions'*[2]. *See under heading—"confession to a Police Officer—when admissible." infra.*

The whole of Admission must be taken :—When a person uses the admission of another as evidence, the whole of the admission must be put in. He can not put in half, and exclude the other half but those who have to decide upon the evidence are not bound to believe the whole of the statement[3]. In a civil case

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1. Section 17, The Indian Evidence Act.
2. *Azimaddy and others* v. *Emperor*. 44 C. L. J. 253.
3. *Rajah Nilmoney Singh Deo* v. *Ramanoograh Roy and Ors.* 7 W. R. 29 Civil.

a plaintiff abandoning his own case and falling back on the admission of the defendant is bound to take those admissions as they stand and in their entirety[1].

Confession to a Police Officer : —When inadmissible —test. No confession made to a Police Officer can be legally proved against any person accused of an offence[2]. A confession made to a Police Officer even if a magistrate was present at the time is not admissible in evidence[3]. But this rule is subject to the exception provided in sec. 27 of the Evidence Act, that is to say when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer so much of the information even if it amounts to a confession as relates distinctly to the facts discovered thereby is legally admissible in evidence. But the information received from the accused must relate distinctly to the thing recovered.[4] The law as to the admissibility of confession is to be found in sec. 24 of the Evidence Act which lays down that if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court, to give the accused person grounds which would appear to him

1. *Tarinee Pershad Sein* v. *Dwarkanath Rukheet* (15 W. R. 451 Civil).
2. Sec. 25 Evd. Act.
3. *Q. E.* v. *Domun Kahar*, 12 W. R. 82.
4. *Pangang*, 19 Cr. L. J. 42.

reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. The confession will be excluded.

Recording of confession—Precaution—when the confession may not be admissible in evidence.

A Magistrate recording a confession has to give a certificate that it was volunterily made in his presence and the confession recorded will then be admissible in evidence. But such a confession will not be legal evidence if it appear to the trial Court that there might have been circumstances as subsequently stated by the accused that there was inducement or threat.

In this connection it must be remembered that in considering the question whether the confession is admissible or not a judge is not confined to the grounds for the confession as contained in the retraction, nor would the fact of putting forward some particular ground for making the confession inadmissible relieve a judge from looking into all the circumstances in order to ascertain whether the confession is voluntary or not. In a jury trial a judge is not concerned with the question of truth or falsity of the confession. That is a matter entirely for the Jury to decide. A judge is simply concerned with the question as to whether the confession is admissible in evidence. No Court is justified in raising an inference of improper treatment from the fact that a confession is retracted and it cannot be laid down that a confession subsequently retracted can-

not be accepted as evidence without independent corroborative evidence. If a judge or jury believe a retracted confession the accused can be convicted on such a confession.[1] But it is not safe to rely on a retracted confession, unless there be corroborative evidence to show that it is true.[2]

Delay in producing the accused :—Unreasonable delay on the part of the police in producing the accused before a Magistrate for recording the confession considerably affects the value of the confession.[3] The illegal or improper detention by the police has always been held as vitiating a confession as a presumption arises that there was ill treatment.[4]

Value of a retracted confession—value against a co-accused :—

If a confession was properly recorded and was not retracted by the accused, the accused may be convicted on such a confession.

But if the accused, subsequently retracts the confession, the law requires that such a confession should be corroborated before it is acted upon. The law on the subject has been clearly explained by their Lordships in the case of *King Emperor* vs. *Biseswar.*[5] Their Lordships said.—"The principle

1. *Q. E.* vs. Maikulal 20 All. 133=17 A. W. N. (1897) 224.
   Q. E. vs. *Raman* 21 Mad. 83.=2 Weir 46, 374 and 503.
2. *Q. E.* vs. *Jadub Das* 27 Cal. 295 =4 C. W. N. 129.
3. Ibid.
4. *Emperor* v. *Panchkari Dutt*, 29 C. W. N. 300, 313.
5. 26 C. W. N. 1010.

which should govern a Court in considering the evidential value of retracted confession have frequently been considered by High Courts in India. It can be laid down as an inflexible rule that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to such a confession must depend on the circumstances under which the confession was originally made and the circumstances under which it was retracted including the reason given by the prisoner for its retraction. It is unsafe for a Court to rely on and act on a confession which has been retracted unless after a consideration of the whole of the evidence in the case the Court is in a position to come to the unhesitating conclusion that the confession is true, that is to say, usually unless the confession is corroborated by creditable and independent evidence." Their Lordships have further pointed out that a retracted confession should carry practically no weight as against a person other than its maker.

How a confession is to be recorded—Rule.—Different High Courts have made rules as to the way in which a confession is to be recorded. These rules have been made to ensure the voluntary character of confession and to provide safeguards against abuse in recording confessions before trial. The Government of India[1] have enjoined that a Magistrate should give the

1. Home Dept. Notification. Police 7217 India Govt. P. 153.

accused few hour's time for reflection so that the accused might be free from the police influence before his confession is recorded. A Magistrate under this rule has to record the accused's statement in detail as much as possible and it should be done ordinarily in open Court and during the Court hours.

Section 164 of the Code of Criminal Procedure makes provision for recording of confession of an accused person. In that section it has laid down that any Presidency Magistrate or Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Local Government if he is not a police officer, may record any confession made to him in the course of an investigation of a case under Chapter XIV of the Cr. P. C. Such confession shall be recorded in the manner provided in section 364, Cr. P. C., that is, in the manner the statement of an accused is recorded and every question put to the accused and every answer given by him shall be recorded in full in the language he is examined and if that be not practicable in the language of the Court or in English. Such record shall be shown or read over or interpreted to the accused and his signature or thumb mark must be taken. A Magistrate recording the confession must, before the confession is recorded, explain to the accused that he is not bound to make a confession and that if he does so it may be used as an evidence against him. A Magistrate shall not record a confession unless he has reasons to believe that it is made voluntarily. The Magistrate after

recording confession has to make a memorandum at the foot of such record that the confession is voluntary and properly recorded. Ordinarily confessions made during the police investigation in a case are recorded under section 164 Cr. C. P. A confession, made during an enquiry may not be recorded by the trying Magistrate himself[1].

Onus of proving whether confession is voluntary ?—In England it is for the prosecution to prove that the confession made by the accused is voluntary. In India the law is otherwise. A confession duly recorded and certified under section 164 of Cr. P. C., is admissible in evidence against a person making it unless shut out by the provisions of the Indian Evidence Act. The subsequent retraction of a confession duly recorded and certified by a Magistrate is not enough in most cases to make it "*appear*" (vide sec. 24 of the Evidence Act) to have been unlawfully induced.

The word 'appears' in section 24 of the Evidence Act indicats a lesser degree of probability than "*proof*," confession may be rejected on well-grounded conjecture[2], but not on mere surmise.

Kinds of confessions.—Confessions can be broadly divided into two classes (i) *Judicial* and (ii) *Extra Judicial.*

Judicial confessions are those which are made

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1. *Barindra* v. *E.* 37 Cal. 467. *Vide* however *Q.* v. *Jetoo*, 23 W. R. 16.
2. *Basvania* v. *E.* 25 Bom. 168, *E.* v. *Panchkori* 52 Cal. 67 *Read Re Raggha* 26 Cr. L. J. 1431 F. B. All.

before and recorded by a Magistrate under sec. 164 of the Code of Criminal Procedure.

Extra Judicial confessions are those which are made by the prisoner before any person other than a Magistrate. The *Extra-Judicial confessions* are admissible in evidence if proved by persons before whom they were made. *Extra-Judicial confessions* may be made before a body of persons. Judicial confessions unless recorded by a responsible person at the time it is made is not often sufficient by itself to justify a conviction. In case of an *Extra-judicial confession* the Court should ascertain the actual words used by the accused. The witness's impression of what the accused said is not sufficient. Justice Phears J observed, "It is all important in matters of this kind to know what are the words which the person, said to have confessed, actually used ; nothing short of the actual words given in detail in the first person, so far as it is possible to obtain them ought ever to be relied on as a foundation for the opinion formed by the Court[1]."

The whole of the confession to be taken and considered.—The Court must take into consideration the whole of the statement of the accused and in case of a jury trial, the Judge in his charge should ask the jury to consider the whole of the confession. In the case of *Q.* v. *Subjan*[2], the accused at one place confessed her guilt and subsequently repudiated it. It was held that the Court should have considered

1. *Q.* v. *Subjan.* 10 B. L. R. 332.

both the statements in the light of other evidence on the record and the circumstances of the case.

Rules made by the Government of India regarding production of accused by police ; recording of confession—remand to police custody.

RULES.

"………The primary duty of the police after arrest is to take an accused person before a Magistrate within the time prescribed in sec. 61, Cr. P. Code and it is only in very exceptional circumstances that he should thereafter be returned to police custody."

"A remand to police custody should not be given unless the officer making the application is able to show good and satisfactory grounds for it ; a general statement that the accused may be able to give further information should not be accepted."

"Whenever possible, when the object of the remand is the verification of the prisoner's statement, he shall be remanded to the charge of a Magistrate."

"The period of remand should be as short as possible."

"A prisoner who has been produced for the purpose of making a confession and who has declined to do so, or has made a statement which from the point of view of the prosecution is unsatisfactory, should in no circumstances be remanded to police custody."

"The Government deprecates the immediate examination of an accused person, directly the police bring him into Court, and suggest the advisibility (where possible) of giving him a few hours of

reflection, in circumstances in which he cannot be influenced by police, before his statement is recorded."

"A Magistrate should record his (accused's) statement with as much detail as possible. The more detailed a confession the greater is the chances of correctly estimating its value. It is also useful to know precisely how it came to be made, to what extent the police had any thing to do with the accused prior to it, and in the confession itself,

......It would also be expedient if the Magistrate should add to the certificate required by sec. 164, in his own hand a statement of the grounds on which he believes that the confession is genuine, the precautions which he took to remove the accused from the influence of the police, and the time (if any) given to him for reflection."

The Calcutta High Court Rules (General Letter No. 1, dated 30-1-17).—1. Where at any place or station there are present more Magistrate than one, confessions should in general be recorded by the Magistrate specially selected for this purpose by the District Magistrate, or failing such selection by the senior in rank or class.

2. Confession should ordinarily be recorded in open Court, during Court hours, provided that if the Magistrate is satisfied, for reasons to be recorded in writing on the form of confession, that the recording of a confession in open Court should be liable to defeat the ends of justice, the confession may be recorded elsewhere.

3. The immediate examination of an accused person, directly the police brings him into Court, should be deprecated and when feasible a few hours for reflection, in circumstances in which he cannot be influenced by the police, should be given him before his statement is recorded.

4. During the examination of the accused and the record of his statement, unless in the opinion of the Magistrate, the safe custody of the prisoner cannot otherwise be secured, police officer should not be present. In particular the police officers concerned in the investigation of the case or in the arrest or production of the accused should be excluded.

5. When the accused is produced, the Magistrate should ascertain when and where the alleged offence was committed and by questioning the accused should further ascertain when and where the accused was first placed under the police observation, control or arrest.

6. It should be made clear to the accused that he is free to speak or to refrain from speaking as he pleases, and he should be warned that if he chooses to speak, any thing he says will be used in evidence against him.........

7. When, upon questioning the prisoner and from the observation of his demeanour, the Magistrate has reason to. believe that the prisoner is speaking or is about to speak voluntarily, the Magistrate should then proceed to record his statement. While carefully avoiding any thing in the nature of cross-

examination the Magistrate should endeavour to record his statement in the fullest detail, and to this end may properly put such questions, not being leading questions, as may be necessary to enable the prisoner to state all that he desires to state and to enable the Magistrate clearly to understand his meaning.

Madras Government orders :—(G. O. No 842, Home (Judicial) dated 24-3-1917).—(1) Village Magistrates are absolutely prohibited from reducing to writing any confession or statement whatever made by an accused person after the police investigation has begun.

3. (1) No Magistrate shall record any statement or confession made by an accused person under sec. 164. Cr. P. C.

(1) Until the Magistrate has first recorded in writing his reasons for believing that the accused is prepared to make the statement voluntarily and (i) until he has explained to the accused that he is under no obligation to answer any question at all, and he has warned the accused that it is not intended to make him an approver, and that any thing he says may be used against him.

(2) Before recording the statement the Magistrate shall question the accused in order to ascertain the exact circumstances in which the confession is made and the extent to which the police have had relations with the accused before the confession is made.........

(3) If the Magistrate has any doubt whether the accused is going to speak voluntarily, he may, if he

thinks fit, remand him to Sub-jail, before recording the statement and ordinarily the accused shall be withdrawn from the custody of the police for twenty-four hours, before his statement is recorded. When it is not possible or expedient to allow so long as twenty-four hours, the Magistrate shall allow the accused at least a few hours for reflection.

(5) The Magistrate shall record the confession in open Court and during Court hours save for exceptional reasons.

An accused who has declined to make it or has made a statement which from the point of view of the prosecution is unsatisfactory, shall not be remanded to police custody. If he is remanded to other custody, the investigating Police-officers shall not, except in presence of the Magistrate, be allowed either to see him again or to have any further communication with him.

It is the duty of the Magistrates, who remand accused persons to custody other than that of the police, and of Magistrates in executive charge of Sub-jails to which the accused persons are remanded, to guard with the greatest care against the possibility of the police interfering with them or subjecting them to any undue influence.

Bombay High Court Rules.

(a) Confession should ordinarily be recorded in open Court and during Court Hours unless for exceptional reasons.

(b) The immediate examination of an accused person, directly the police brings him in to Court, is

deprecated. It is very advisible to give him, when feasible, a few hours for reflection in circumstances in which he can not be influenced by the police, before his statement is recorded.

(c) Before recording a confession, the Magistrate should firmly warn the accused though not necessarily in set words that any thing said by him will be taken down and thereafter be used against him.

(d) The Magistrate should invariably satisfy himself by questioning the accused and by all means in his power, that the confession is voluntary. He should whenever feasible, examine the body of the accused.

(h) It is not desirable that any Police-officer should be present when a confession is being recorded under Sec. 164.

(i) The Magistrate should invariably question the accused as to the length of time during which he has been in the custody of the police.

(j) The Magistrate should question the accused with a view of ascertaining the exact circumstances in which the confession was made and the connection of the police with it. Every question and answer should be recorded in full.

N. B. The rules made by the other High Courts are of the same nature. The rules aim at getting voluntary confessions and not those made under undue influence, threat, etc.

Confession—Irregularity in recording—effect—Recent Privy Council decision :—In the recent Privy Council case of *Nazir Ahmad* v. *King Emp.*[1] decided on

1. 40 C. W. N. 1221.

the 16th June, 1936, a very important pronouncement was made by their Lordships of the Judicial Committee. In this case the accused after his arrest was taken by a Magistrate to the place of occurrence and the police was sent away. The accused got the Magistrate and pointed him out the place connected with the crime. It is said that at this stage a confessional statement was made by the accused and the Magistrate took rough notes. Later on the Magistrate dictated, to a typist, a memorandum of confession from the notes. The memorandum was signed by the Magistrate and the Magistrate certified as to the voluntariness of the statement. At the trial the Magistrate gave oral evidence of the confession and put in as a document the memorandum containing the substance of the confession. It was *held* that effects of sections 164 and 364 of Cr. P. C., which must be read together is that a confession can be recorded by a Magistrate only in the manner prescribed in those sections and that the confession can be proved by only such document. Confessional statement not recorded according to the procedure laid down in those two sections is inadmissible in evidence and can not be orally proved by the Magistrate. It was further laid down that section 533 Cr. P. C., cures some irregularity in recording confession in cases where there is no miscarriage of justice but that the section has no application, where the Magistrate did not at all purport to act under sections 164 and 364 Cr. P. C. Their Lordships further observed that the Magistrate acting under sections 164 and 364 of Cr.

P. C., is a judicial officer though not a Court, and the general rule applying to Court that where a power is given to do a thing in a certain way, the thing must be done in that way, applies in the case of the Magistrate recording confession. Their Lordships consequently refused to admit the oral evidence of the Magistrate and the memorandum in evidence holding that both were inadmissible.

Joint trial—Confession of one accused—its value against co-accused :—When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession[1]. It is necessary that the person making the confession must implicate himself to the same extent as the other co-accused, that is, he must tar himself and the person or persons he implicates with one and the same brush.[2] But if the statement of the accused is of an exculpatory nature and does not amount to an admission of guilt, it is not admissible as evidence of guilt against other accused.

The confession has simply to be taken into consideration for judging the other evidence on record and the confession is by itself no legal evidence.[3]

1. See section 30 Evidence Act.
2. *Emp. vs. Ganraj* 2 All 444=4 Ind. Jur. 581.
3. *Queen Emp. v. Nirmal* 22 All. 445.

The legislature has cautiously laid down that confessions may be taken into consideration. Such a statement can not by itself form the basis of conviction of a co-accused[1], because the statement is not made on oath and can not assume the character of substantive evidence of the case. The law therefore simply gives a discretion to the Court to consider the confession against a co-accused[2]. If there is sufficient corroborating evidence in support of a statement there can be a valid conviction[3]. It has already been said that a retracted confession practically carries no weight against a person other than its maker[4].

When one co-accused pleads guilty and is removed from the dock and the other accused alone is tried the confession of the former can not be taken into consideration as against the latter under sec. 30 of the Indian Evidence Act for there is no joint trial[5]. (*See Infra*)

Taken into consideration :—The words *"take into consideration"* in sec. 30 do not mean that the confession referred to in the section is to have the

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1. *Barinda* vs. *Emp.* 37 Cal. 467.
2. *Sadhu* vs. *Emp.* 21 W. R. 69.
3. *Ashootosh* vs. *Empress* 4 Cal. 483.
   Maikulal vs. *Q. E.* 20 All. 133=17 A. W. N. (1897) 224.
4. *Yasin* vs. *K. E.* 28 Cal. 689.
5. *Emperor* v. *Keramut Sirdar.* 16 C. W. N. 49.
   &
   Queen Empress v. *Pahuji* 19 Bom. 195.

force of sworn evidence[1]. The true effect of the language is that the Court can only treat a confession as lending assurance to other evidence against a co-accused, a conviction based on the mere confession of a co-accused is bad in law[2]. Their Lordships of the Calcutta High Court in the case of *E.* v. *Abani Bhusan Chakrabarty*[3] observed that confession of a co-accused is not better than the statement of an accomplice and that the statement requires to be corroborated by independent testimony. Unsupported by other evidence, it however, should be taken as evidence of the very weakest kind being simply a statement of a third person not made upon oath or affirmation[4].

Confession Verification—statement made during verification.—In the case of *Amiruddin* vs. *Emp.*[5] their Lordships observed that though the verification of a confession is not wholly illegal, the statements made by the accused during the verification proceedings should not be accepted as evidence in the case. Such statements are made in the course of an investigation

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1. *Queen Empress* v. *Nirmal Das and others.* 22 All. 445=20 A. W. N. (1900) 169.

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Queen Empress v. *Khandia* Bir Pandu 15 Bom. 66.

2. *The Emperor* v. *Nanigopal Gupta.* 15 C. W. N. 593.
3. 38 Cal. 169=15 C. W. N. 25.
4. *The Empress* v. *Ashootosh Chuckerbutty and others*—4 Cal. 483 (F. B.)=3 C. L. R. 270=1 Shome L. R. Cr. 1. R. 79 (Full Bench) *Q.* v. *Krisnabhat* 10 Bom. 319.
5. 45 Cal. 557, 44 I. C. 321.

and not recorded in the manner provided in section 164 Cr. P. C., and as such inadmissible in evidence. In this case the Deputy Magistrate after recording confessions took the accused to various places for the purpose of verification and in the course of verification accused seems to have supplemented his former recorded confession by other statements of an incriminating nature and the Deputy Magistrate was examined in the Sessions Court to prove these statements though they were not recorded at the time under section 164 Cr. P. C. It was held that those additional statements were not admissible as evidence[1].

If inadmissible confession is received in Evidence—its Effect.—The reception as evidence against an accused person of a confession which ought not to have been proved, and which is not in accordance with the law, and the grounding of a case against him upon such confession, is a serious irregularity which prejudices the prisoner and vitiates the trial[2].

Procedure when the accused pleads guilty to the charge—value of his statement against other accused—joint trial.—When more persons than one are jointly tried and if one person makes a confession and pleads guilty to the charge and implicates other accused persons the proper procedure is to convict the confessing accused and examine him as witness against other accused persons so that the latter may

1. *Amiruddin* v. *K. E.* 22 C. W. N. 213.
and *Queen Emp.* vs. *Nana* 14 Bom. 260.
2. *The Queen* v. *Chunder Bhuttacharjee.* 24 W. R. 42.

have an opportunity of cross-examining the confessing accused. The practice in a joint trial of refusing to accept the plea of guilty and proceeding to try the accused in order that his confession may be taken into consideration against the co-accused is illegal and an abuse of the process of Court[1]. It is true that the section 271 Cr. P. C., seems to give the judge a discretion, but if the plea is not accepted, there seems to be no sense in recording it[2].

CHAPTER IV.

EVIDENCE OF AN ACCOMPLICE.

Evidence of accomplice—its value ; Verification :— Retracted confession :

An accomplice is a competent witness against an accused and a conviction is not illegal if based upon the uncorroborated testimony of an accomplice[3]. At the same time the illustration (b) to section 114 of the Evidence Act says that the Court must presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. So though the conviction based upon the uncorroborated statement of an accomplice is not technically illegal, still the rule of prudence dictates and it has been the uniform

1. *Md. Jusuf* vs. *Emp.* 35 C. W. N. 490
2. *Khudiram Dass* vs. *Emp.* 12 C. W. N. 530.
3. Section 133 Indian Evidence Act.

practice of our Courts not to convict on the testimony of an accomplice unless it is corroborated in his material particulars. Taylor in his Evidence has observed that "accomplices are interested and always infamous witnesses whose testimony is admitted from necessity, it being often impossible without having recourse to such evidence to bring the principal offender to justice." As to corroboration required their Lordships Rankin C. J., and Pearson and S. K. Ghosh JJ., have observed in the case of *Ambika Charan Roy* v. *Emp.*[1] that corroboration which merely confirms the outline of the story is not sufficient. It must contain some circumstances that affects the identity of the person accused. The corroboration, however, need not cover every act ascribed to the accused.

Where a man was in the gang of dacoits—broke open into the house, tortured the inmates and removed valuables from different rooms he will be able to give a vivid description of the whole of the occurrence and may point out places where they had been, without identifying the accused—who were alleged to be participators in the dacoity. This corroboration will not at all be sufficient in the eye of law. The accomplice must identify the accused and specifically say what act or acts were committed by the latter in the commission of the crime. The danger of accepting the uncorroborated testimony of an accomplice is that when the accomplice understands that his guilt

1. 35 C. W. N. 1270.

has been detected it will be his interest to purchase immunity by falsely implicating others[1].

In a jury trial the judge has to caution the jury as to the weight they are to attach to the evidence of the accomplice. Then it will be for the jury either to reject or to accept the evidence of the accomplice or any particular part thereof. The rule regarding the nature and the extent of the corroboration is governed by long judicial experience

The Magistrates often go to the moffusil with a view to verify the confession of the accused. The verification proceedings in connection with confessions are some times open to grave criticism and these proceedings do not add any value and can not be regarded as corroboration. This has been clearly emphasised in the Special Bench case of *Emp.* v. *Lalit Mohan Chakravorty*[2]. Where a confession is verified by a Magistrate the proper course for the prosecution is to examine the Magistrate himself and not to examine the witnesses said to have been present at the time of the verification as their evidence is of much inferior type[3].

In some cases it has been held that corroboration need not be by direct evidence of the commission of crimes. Circumstantial evidence may some times be accepted as corroborating evidence[4].

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1. 35 C. W. N. 1270 (*supra*)
2. 38 Cal 559.=15 C W. N. 593=12 Cr. L. J 286=10 I. C. 582.
3. *Kadersundar* vs. *Emperor* 16 C. W. N. 69.
4. *Hazari* vs. *Emp.* A. I. R. 1930. O. 353. and *Lale* vs. *E.* A. I. R. 1929. O. 221.

I have already said that it is for the Judge to tell the Jury the value to be attached to the approver's evidence. He should at the same time say what sort of evidence will be legally considered as material corroboration[1]. Mere fact that the accused was seen with the approver a few days before the commission of the dacoity with some dacoits cannot be considered as material corroboration[2]. The amount of corroboration required varies according to circumstances in each case, particularly having regard to the nature of the charge. No general rule can be laid down on this point. A person who gives bribe is an accomplice of the person who receives it. So it is unsafe to convict a public servant on the evidence of the person who says he gave bribe[3].

Benson Wallis And Miller JJ., have held in the case of *Muthukumar Swami* v. *Emperor*[4] that if the Court is satisfied from the attending circumstances of the case that the evidence of the accomplice is true, it can convict the accused even though the testimony is not corroborated. This can only be done where the presumption of untrustworthiness attaching to the evidence of an accomplice is rebutted by special circumstances. So if the Jury, after the usual warning by the Judge, convicts a person on the uncorroborated statement of the accomplice the conviction is not bad in law.

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1. *Hachuni* vs. *Emp.* 34 C. W. N. 390.
2. *Emp.* vs. *Ramkaran* 88 I. C. 453
3. *King Emp.* vs. *Malhar* 26 Bomb. 193.=3 Bom. L. R. 694.
4. 35 Mad. 397.

A retracted confession of an accomplice is admissible in evidence only against him Lort Williams J., held in the case of *Rebati Mohon* v. *King Emp.*[1]. that the question as to what is or is not, what amounts or does not amount to corroborative evidence in law is a question of law to be decided by the judge.

CHAPTER V.

HOSTILE WITNESS.

Hostile Witness.—The Court under section 154 of the Evidence Act has discretion to permit the person who calls a witness to cross-examine him. A witness is not to be considered hostile simply because he gives unfavourable answers. Mookherjee, and Buckland JJ, have observed that a witness may be considered as hostile who from the manner in which he gives his evidence appears to be unwilling to tell the truth before the Court[2]. It is for the Court to decide whether a witness is hostile to the party calling him. The fact that a witness is dealt with under section 154 of the Evidence Act is no ground for rejecting his evidence altogether. There is no rule of law that the evidence of such a witness must be rejected either in whole or in part, or that it must be rejected so far as it favours the party calling him or so far as it

1. *Rebati Mohan Chakravarty* vs. *King Emperor* 32 C. W. N. 945.
2. *Luchiram* vs. *Radacharan* 34 C. L. J. 107. and *Coles* vs. *Coles* 1866 L. R. 1. P & D. 70.

favours the opposite party. The Court may believe such portion of his statement as is corroborated by other independent witnesses on the record. In a Session trial if the witness makes contradictory statements the whole of his evidence including his previous statement before the committing Magistrate must be placed before the Jury for what it is worth and it is for the Jury to accept or reject the evidence of the witness in whole or in part[1].

In this connection it may be noted that the prosecution can not put questions to its witness, which could only be allowed in cross-examination, without first declaring the witness hostile and getting the Court's permission to cross-examine.

The defence may put leading questions in cross-examination to a hostile witness to elicit facts in support of the defence theory[2].

CHAPTER VI.

DYING DECLARATIONS.

Dying declarations.—This comes under clause (1) of section 32 of the Evidence Act. In order to make dying declaration admissible in evidence it must be proved that the declarant was in actual danger of death and that he knew it. Taylor in his law of Evidence observes that "implicit reliance can not in

1. *Prafulla Kumar* vs. *E.* 35 C. W. N. 731 (F. B.)
2. *Amrita Lal Hazra* vs. *Emp.* 42 Cal. 957=19 C. W. N. 676=16 Cr. L. J. 497=29 I. C. 513.

all cases be placed upon the declarations of a dying person ; for his body may have survived the powers of his mind ; or his recollection, if his senses are impaired may not be perfect ; or, for the sake of the ease, and to be rid of the importunity of those around him, he may say or seem to say, whatever they choose to suggest......though these declarations, when deliberately made under solemn sense of impending death, and concerning circumstances wherein the deceased is not likely to be mistaken are entitled to great weight. It should always be recollected that the accused has not the power of cross-examination, a power quite as essential to eliciting of the truth as the obligation of an oath can be ;—and that where a witness has not a deep sense of accountability to his Maker, feelings of anger or revenge or, in the case of mutual conflict the natural desire of screening his own misconduct, may affect the accuracy of his statements and give a false colouring to the whole transaction. Moreover the particulars of the violence to which the deceased has spoken are likely to have occurred under circumstances of cofusion and surprise, calculated to prevent their being accurately observed and leading both to mistakes as to the identity of persons, and to the omission of facts essentially important to the completeness and truth of the narrative."

The value to be attached to dying declaration.— This matter was fully discussed by Mookherji, J. in the case of *Emperor* v. *Premananda Dutta*[1]. His lord-

1. 52 Cal. 987=29 C. W. N. 738=42 C. L. J. 247.

ship's observations on the point summarise the law on the subject. His lordship says, "In the case of a dying declaration which by the law of this country assumes a character very widely different from what it is under the English law, which is relevant under the Indian Evidence Act, whether the person who made it was or was not at the time when it was made, under the expectation of the death, and the weight to be attached to which depends not upon the expectation of death which is a guarantee of its truth, but upon the circumstances and surroundings under which it was made and very much also upon the nature of the record that has been made of it, it becomes almost always a question of fact as to whether it should be relied upon or not. There is high authority for the proposition that, Where a statement is not the *ipsissima verba* of the person making it but is composed of a mixture of questions and answers, there are several objections open to its reception in evidence, which it is desirable should not be open in cases in which the person has no opportunity of cross-examination. In the first place the questions may be leading questions, and in the condition of a person making a dying declaration there is always very great danger of leading questions being answered without their force and effect being freely comprehended. In such circumstances the form of the declaration should be such that it would be possible to see what was the question and what was the answer, so as to discover how much was suggested by the examining Magistrate and how

much was the production of the person making the statements." *Per Cave, J., In R.* v. *Mitchell*[1].

Dying declaration—when it does not relate to the cause of death—effect.—A statement of a witness as to what he heard from the deceased when it does not relate to the cause of his death or the circumstances of the transaction which resulted in his death is hear-say and is not admissible, they must be proved in the ordinary way, *viz.*, by evidence of a primary character and not by hear-say testimony[2].

Dying declaration how to be proved.—A dying declaration recorded in the absence of the accused, and by a Magistrate other than the inquiring Magistrate, is not admissible until it is proved by the recording officer[3].

The dying statement of a deceased person must be taken in the presence of the accused; if not so taken the writing can not be admitted to prove the statement made. The statement may be proved in the ordinary way by a person who heard it, and the writing may be used for the purpose of refreshing the witness's memory[4].

The precise statement made by the deceased must be proved by the Magistrate who recorded the state-

1. 17 Cox. C. C. 503, (1892).
2. *Q. Emp.* v. *Surendra Nath Sircar*, 5 C. W. N. 574.
3. *Panchu Das* v. *Emp.*, 34 Cal. 698=11 C. W. N. 666=5 Cr. L. J. 427.
4. *Q. Emp.* v. *Samiruddin*; 8 Cal. 211=10 C. L. R. 11.

ment or some one who heard it. Section 91 of the Evidence Act does not apply to such a document[1].

A declaration made by a person in expectation of death recorded in the absence of the accused and in a language different from the one in which it was made, by an officer who is not examined in the case can not properly be used in evidence against the accused.

When such a declaration is not a continuous statement made by the dying person but is elicited in answer to one or more questions the document to be really of use, should clearly set out the exact questions put and the answers made to them[2].

A petition of complaint and the examination of the complaint on oath under section 200 of the Criminal Procedure Code are admissible as dying declarations under section 32, clause (1), of the Evidence Act, and are not, as such, matters required by law to be reduced to the form of a document so as to exclude parole evidence[3].

CHAPTER VII.

STATEMENT BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

Statement by persons who can not be called as witnesses :—Statements, written or verbal, of relevant

1. *Gouridas Namasudra* v. *Emp.*, 13 C. W. N. 680=2 I. C. 841 =10 Cr. L. J. 186=36 Cal. 659.
2. *King Emperor* v. *Mathura Thakur*, 6 C. W. N. 72.
3. *Gouri Das Namasudra* v. *E.* 36 Cal. 659=13 C. W. N. 680.

facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable are themselves relevant facts in the following cases :—

(1) when it relates to the cause of death ;

(2) when it is made in the course of business ;

(3) when it is against the interest of the maker ;

(4) when it gives an opinion as to public right or custom, or matters of general interest ;

(5) or when it relates to the existence of relationship ;

(6) or when it is made in a will or deed relating to family affairs ;

(7) or in a document relating to a transaction regarding custom or right ;

(8) or when it is made by several persons and expresses feelings relevant to the matter in question.[1]

The question is as to the date of A's birth. An entry in the diary of a deceased surgeon, regularly kept in the course of business stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact. The question is, whether A and B were legally married. The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is rele-

1. Section 32, The Indian Evidence Act.

vant. The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact. The question is, whether, and when, A and B were married. A entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

Clause 1. Dying declaration.—These comes under clause (a) of this sec. This matter has been fully discussed in the last Chapter.

Clause 2. Course of business.—The phrase "in the course of business" does not apply to any particular transaction of an exceptional kind, such as the execution of a deed of mortgage, but to business or professional employment in which the declarant was ordinarily or habitually engaged. The "business" referred to may be of a temporary character.[1]

Clause 3. Statement against interest.—Statement in a deed is admissible under Clause 3 of Sec. 32 if the statement be against the pecuniary or proprietary interest of the executant of the document[2].

Clause 4. Custom.—Evidence, oral or documentary, as to statements of a deceased person as to the custom in a family is not admissible, if it appears that such statements were made after a controversy as to the custom had arisen[3].

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1. *Ningawa* v. *Bharmappa and others*, 23 Bom. 63.
2. *Sheonandan Singh* v. *Jeonandan Dusadh*, 13 C. W. N. 71.
3. *Ekradeswar Singh* v. *Musammat Janeshwari Bahuasin*, 18 C. W. N. 1249. P. C.

Clause 5 & 6. The recital of the date of birth in a guardianship application.—It is in substance a statement by the person who made the application. If the conditions mentioned in Sec. 32 (5) of the Indian Evidence Act are fulfilled, for instance, if the person who made the statement is dead or cannot be found and had special means of knowledge of relationship, the statement may be made admissible. If the person is examined as a witness, his credit may be impeached under Section 155 of the Evidence Act by the production of the recital in the application[1].

Horoscope.—A horoscope is not admissible unless it is proved by the person who made it or who has knowledge of its contents[2]. *Statements made by a deceased family priest* as to the relationship of the members of the family may be given in Evidence under Sec. 32, Clause 5, of the Evidence Act[3]. The plaintiffs sought to establish their pedigree by proving *inter alia* that A and B were brothers. *Held*—that a statement to that effect made by one of the plaintiffs in a deposition given long before the controversy in suit arose was admissible in evidence[4]. A witness may state, information derived from deceased persons as the ground of his opinion as to the existence of a family custom.

1. *Prohlad Chandra Chowdhury* v. *Ramsaran Chowdhury and another*, 38 C. L. J. 213.
2. *Krishnamachariar* v. *Veeravalli*, 38 Mad. 166=24 M. L. J. 517=19 I. C. 152.=A. I. R. 1915 Mad. 815.
3. *Sham Lal Singh* v. *Radha Bibee and another* 4 C. L. R. 173.
4. *Jadu Nath Sarkar* v. *Mahendra Nath Rai Chowdhury*, 12 C. W. N. 266.

A statement relating to existence of any relationship contained in a document signed by several persons, some only of whom are dead, is admissible in evidence under Clause 5[1].

Clause 7. A family custom may be proved by recitals contained in a family document executed before the controversy[2].

Clause 8. The provisions of S. 50 of the Evidence Act show that where marriage is an ingredient of an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage, which must be strictly proved, is relevant[3].

CHAPTER VIII.

BURDEN OF PROOF.

Burden of Proof.—Whoever desires any Court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. A desires a Court to give judgment that B shall be punished for a crime which A says B has committed A must prove

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1. *Chandra Nath Roy* v. *Nilmadhab Bhuttacharjee*, 26 Cal. 236 = 3 C. W. N. 88.
2. *Hurro Nath* v. *Nittyanand*, 10 B. L. R. 263.
3. *The Empress* v. *Pitamber Singh*, 5 Cal. 566 (F. B.) = 5 C.L.R. 597 = 3 Shome L. R. Crl. R. 13.

that B has committed the crime[1]. The burden of proof as to any particular fact ordinarily lies on that person who wishes the Court to believe in its existence[2].

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. A wishes to prove a dying declaration by B. A must prove B's death[3].

Prosecution—onus.—Defence, if not true—presumption. In a criminal case the onus is on the prosecution to prove, beyond reasonable doubt, the guilt of the accused. That onus never changes. Where recent possession of stolen property by the prisoner is established and he offers an explanation which the jury thinks may be reasonably true, the prisoner is entitled to an acquittal because the Crown in such a case has not discharged the onus of proof that rests upon it[4].

If the case for the prosecution is false on the whole, the accused is entitled to an acquittal whether his defence be true or false[5].

The prosecution is entitled to the benefit of the presumption that a man intended the natural and ordinary consequences of his acts. If he does an act which is illegal, it does not make it legal if he did

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1. Sec. 101, Evidence Act.
2. See Sec. 103, Evidence Act for further particulars.
3. Sec. 104, Evidence Act.
4. *Hathem Mondal v. King Emperor*, 24 C. W. N. 619.
5. *Gouri Narayan Barrua v. Tilbikram Chetri*, 25 C. W. N. 838.

it with some other object unless the object was such as would, under the circumstances, render the particular act lawful[1].

Where facts are as consistent with a prisoner's innocence as well as with his guilt, innocence must be presumed; criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law[2].

Burden of proving that the case of accused comes within exceptions.—In all criminal cases tried it is incumbent on the accused to prove the existence (if any) of circumstances which bring the offence charged within the general or special exceptions or provisions contained in any part of the Penal Code or in any law defining such offence[3].

(*a*) A, accused of murder alleges that by reason of unsoundness of mind, he did not know the nature of his act. The burden of proof is on A.

(*b*) A, accused of murder, alleges that by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.

Accused—how to discharge the onus.—It is true that Section 105 of the Evidence Act places on the accused in any criminal trial, the burden of proving that

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1. *Sellamuthu Servaigaran* v. *Pallamuthu Karuppan*, 35 Mad. 186=9 I. C. 152=9 M. L. T. 283=12 Cr. L. J. 30=21 M. L. J. 161.
2. *Queen* v. *Nabokristo Ghose*, 8 W. R. 87.
3. Sec. 105 Evidence Act: *In the matter of the petition of Shiboo Prosad Pandah*, 4 Cal. 124=3 C. L. R. 122=1 Shome L. R. Crl. 72.

he acted within his legal rights in the exercise of the right of private defence of property. This burden can be discharged by the evidence of witnesses for the prosecution as well as by evidence for the defence (on such a plea being set up), and the accused is clearly entitled to claim an acquittal if, on the evidence for the prosecution, it is shown that he has committed no offence[1].

Burden of proving fact especially within one's knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him[2].

When a stranger, uninvited and without any right effected an entry in the middle of the night into the sleeping apartment of a lady and when an attempt was made to capture him used great violence in his efforts to make good his escape, and failed to give satisfactory explanation of his conduct,—the Court presumed that the entry was made with an intent as mentioned in Sec. 441 of the Indian Penal Code[3].

CHAPTER IX.

PROVING OF FACTS.

Oral evidence.—All facts except the contents of documents may be proved by oral evidence. Oral evidence must, in all cases be direct, that is to

1. *In the matter of Kali Churan Mookerjee*, 11 C. L. R. 232.
2. Sec. 106, Evidence Act.
3. *Kailash Chandra Chakraborty v. Queen Empress*, 16 Cal. 657.

say, if it refer to a fact which could be seen, it must be the evidence of a witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; if it refers to a fact which could be perceived by any other sense or in any other manner, it must be evidence of a witness who says he perceived it by that sense or in that manner; if it refers to an opinion or to the grounds on which that is held, it must be the evidence of the person who holds that opinion on those grounds[1].

The moment the witness commences giving evidence which is inadmissible, *e. g.*, hearsay evidence, he should be stopped by the Court[2]. No fact of which the Court will take judicial notice need be proved. Facts admitted need not be proved.

Documentary evidence.—The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.—Primary evidence means the document itself produced for the inspection of the Court.

Secondary evidence.—I shall presently say the ways in which an original document can be proved. If the original document is lost, its certified copy can be proved by calling a witness who was present at the time the original document was written and executed. If the document be in the possession of a

1. Section 60, Evidence Act.
2. *Q. Emp.* vs. *Pittambar Sirdar*, 7 W. R. 25.

third party, it should be called by summoning him to produce it. If the witness fail to produce the document, its certified copy may be proved. If the document was not registered, oral accounts of contents may be proved by some persons who saw the document. For further particular regarding adducing of secondary evidence, read Sections 64 and 65 of the Evidence Act.

Public document.—A public document may be proved by filing a certified copy of it.

Proof of documents.—If a document is alleged to be signed or to have been written wholly or in part by any person the signature or the hand-writing of so much of the document as is alleged to be in that person's hand-writing must be proved to be in his hand-writing[1]. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution,—if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence, provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specially denied[2]. The Evidence Act does not require the

1. Section 67, Evidence Act.
2. Section 68, Evidence Act. (See Act XXXI of 1926.)

writer of a document to be examined as a witness : nor does Section 67 of that Act require the subscribing witnesses to a document to be produced[1].

Comparison of two documents.—Section 73 of the Evidence Act does not sanction the comparison of any two documents, but requires, *at first* that the standard writing shall be admitted or proved to be that of the person to whom it is attributed ; and secondly, that the disputed writing must *itself purport* to have been written by the same person.

Regard being had to the definition of "proved" in Section 3 of the Evidence Act, "moral conviction," provided it is based exclusively on evidence that is admitted, is not distinguishable from "legal proof."

The ordinary methods of proving hand-writing.—Hand-writing may, in addition to the usual methods, be proved by circumstantial evidence under Section 67 of the Evidence Act, which prescribes no particular kind of proof[2].

The ordinary methods of proving hand-writing are (i) by calling as a witness, a person who wrote the document or saw it written, or who is qualified to express an opinion as to the hand-writing by virtue of Section 47 of the Evidence Act ; (ii) by comparison of hand-writing as provided in Section 73 of the Evidence Act ; and (iii) by the admission of the person against whom the document is tendered. A document does not prove itself, nor is an unproved

1. *Abdool Ali* vs. *Abdoor Ruhman.* 21 W. R. 429 (Civil).
2. *Barindrakumar Ghose* vs. *Emp.* 37 Cal 467=14 C. W. N. 1114=7 I. C. 359=11 Cr. L. J. 453.

signature proof of its having been written by the person whose signature it purports to bear.[1] Mere registration of a document is not in itself sufficient proof of its execution[2].

Attesting witness.—To be an attesting witness within the meaning of Sec. 59 of the Transfer of Property Act, the witness must not only have seen the execution of the document but should have also subscribed as a witness. A scribe, when he does not subscribe as a witness, cannot be considered as an attesting witness to a deed which by law requires to be attested[3].

How to prove the document if attesting witnesses are dead.—

If all the attesting witnesses are dead, a witness who knows the hand-writing of one of the attesting witnesses at least may be called to prove the signature of that attesting witness. This can be done even in a case where the executant purported to sign the deed by putting his mark. The statement of the deed-writer that the mark was that of the executant is admissible under Section 32, clause 2 of the Evidence Act[4]. The rule is same whether the document requires attestation or not.

An attested document not required by law to be attested may be proved as if it was unattested[5].

1. *Sarojini Dasi* vs. *Haridas Ghose*, 26 C. W N. 113.
2. *Sakmatul Fatima* vs. *Koylash Poti Naraian Singh*, 17 Cal. 903.
3. *Ram Bahadur Sing* vs. *Ajodhya Singh*, 20 C. W. N. 699.
4. *Abdulla Paru* vs. *Ganni Bai*. 11 Bom. 690.
5. Section 72, Evidence Act.

Public Documents.—Proof.—Public documents have been mentioned in Section 74 of the Evidence Act and the mode of their proof in Sections 76 and 78 of the Evidence Act Proceeding of a Municipal body (which is public document) may be proved by the production of its copy.

The legitimate way of proving the proceedings of a body corporate in British India is by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority of such body (as laid down in Cl. 5 Section 78 of the Evidence Act[1].

Presumption as to documents thirty years old.—Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the hand-writing of any particular person, is in that person's hand-writing, and, in the case of a document executed or attested that it was duly executed and attested by the peasons by whom it purports to be executed and attested[2].

The presumption allowed by Section 90 of the Indian Evidence Act, may be applied also where the original of a document sought to be proved has been

1. Syed *Mokram Ali* vs. *The Cuttack Municipality*, 17 C. W. N. 531.
2. Section 90, Indian Evidence Act.

destroyed and only secondary evidence of its contents in the shape of a certified copy is available[1].

Exclusion of oral evidence.—When the terms of a contract or of a grant or of any other disposition of property, have been reduced to the from of a document and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of terms of such contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible.

A gives B a receipt for money paid in part by B. Oral evidence is offered of the payment. The evidence is admissible[2],—because a part payment does not legally require to be reduced to writing. If any contract is put in writing, oral evidence cannot be adduced to the exclusion of the written contract.

Evidence given by a witness in a judicial proceeding—when can be used as evidence in a subsequent proceeding.—The following conditions are necessary to be fulfilled before the previous evidence can go in as evidence in subsequent proceedings or in a later stage of the same proceedings[3] (a) if the proceedings were between the same parties or their representatives in interest ; (b) if the adverse party in the first proceed-

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1. *Ishri Prasad Sing* vs. *Lalli Jas Kunwar*. 22 All. 294=20. A. W. N. (1900) 82.
2. Section 91, Evidence Act.
3. Sec. 33 of the Evidence Act.

ings had the right and opportunity to cross-examine, (c) if the questions in issue in the two proceedings are substantially same ; (*e.g.* criminal trial or inquiry is a proceeding between the prosecutor and the accused) (d) When the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which may seem unreasonable.

The death of the witness is to be strictly proved.—The deposition of the witness can be proved by calling the original record or by producing a certified copy of the deposition. *The deposition of a witness who dies before cross-examination is not admissible in the second proceedings*[1].

Judgments admissible in evidence.—Certain judgments are admissible in evidence as stated in Sections 41 to 43 of the Evidence Act.

Conspiracy Case—evidence.—In a charge of conspiracy, general evidence of the existence of the conspiracy is first given, before particular facts are proved to show that one or more of the accused took part in it[2].

Impeaching credit of witness.—Credit of a witness may be impeached under Section 155 of the Evidence Act.

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1. *Narsing* v. *Gokul*, 50 All. 113.=25 C. L. J. 775=A. I. R. 1928 A. 140.
2. *Amrita Lal Hazra* v. *Emperor*, (21 C. L. J. 331).=42 Cal. 957 =19 C. W. N. 676—16 Cr. L. J. 497=29 I. C. 513.

Rape case—character—statement of raped girl.—When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was generally of immoral character[1]. A statement of the raped girl that she had been raped in answer to enquiries by persons who saw her weeping is admissible under Section 157, Evidence Act.[2] In cases of a charge of rape the judge must give a warning to the Jury that it is dangerous to convict on the uncorroborated testimony of the prosecutrix, adding however that they may accept such testimony if after proper scrutiny and consideration of the rule of caution they choose so to do. (*Sekandar Mia* v. *E.* 41 C. W. N. 641.) *See Section 8 of the Evidence Act illustration* (J).

Questions tending to corroborate evidence of relevant facts.—A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself[3].

Previous statements—corroboration dying declaration—declarant surviving.—Former statements of a witness may be proved to corroborate his later testi-

1. Sec. 155 (Cl. 4). Evidence Act.
2. *Sqosalal Bania* v. *Emp.* 25 Cr. L. J. 1214=A. I. R. 1925 Nag. 74.
3. Sec. 156, Evidence Act.

mony as to the same fact[1]. If a man survives after making a dying declaration and is examined in Court, his previous statement made in the form of dying declaration can be used under Sec. 157 of the Evidence Act to corroborate his statement made in Court[2].

First information—corroboration.—Evidence Act.— First information is not evidence in a case. It is tendered by the Crown for such use as the defence may be able to make of it and to test the consistency of the prosecution evidence[3]. It can be used as a corroborative evidence or as a contradiction[4].

Refreshing memory —A witness may, while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned. A witness may refresh his memory by reference to any document with the permission of the Court[5].

A witness before a Court of Justice is under an obligation to tell the truth,—the whole truth to the very best of his power; if upon any question he suffers from a *bonafide* lapse of memory, that failure of memory can be remedied by reference to any memorandum or other writing prepared by him. If the Court invites the witness to refresh

1. Sec. 157, Evidence Act.
2. *Ram Sattu*, 4 Bom. L. R. 434.
3. *Asfar Sheikh* v. *K. E.*, 15 C. W. N. 198.
4. *Emperor* v. *Chittar*, 47 All. 280=23 A. L. J. 14=85 I. C. 650.
5. Sec. 159, Evidence Act.

his memory with reference to his writing, the witness is under an obvious obligation to do so.

Police diary.—Refreshing memory.—In giving evidence a Police-officer may refresh his memory by referring to documents in which he reduced into writing,—statements of persons examined by him, during an investigation. But the documents themselves cannot be used as evidence[1].

Post-mortem report—refreshing memory.—A medical man, in giving evidence, may refresh his memory by referring to a report which he made of his *post mortem* examination. But the report itself cannot be treated as evidence, and no facts can be taken therefrom[2].

Improper admission or rejection of evidence.—The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised, that independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision[3].

Under Section 167 of the Indian Evidence Act it is permissible for the High Court in spite of the improper admission of a confession in evidence to

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1 & 2. *Roghuni Sing* v. *Empress*, 9 Cal. 455=11 C. L. R. 569=5 Shome L. R. 47.

3. Sec. 167, Evidence Act.

uphold the conviction,—if independently of the evidence objected to there is sufficient evidence to justify the decision of the Sessions Judge[1]. What a Court of Appeal, has to consider is whether the reception of inadmissible evidence influenced the minds of the jury so seriously as to lead them to a conclusion which might have been different but for its reception. Hence, where inadmissible evidence has been admitted, there are two points for consideration; *firstly*, whether the reception of the inadmissible evidence has, in fact, occasioned a failure of justice, and *secondly* whether if it is excluded, there is sufficient evidence to justify the verdict of the Jury[2]. In examining the evidence, the High Court must consider whether it may, with reasonable certainty, hold that, even if the evidence improperly admitted had been excluded, the jury, upon the residue of the evidence, would have brought in a verdict of guilty[3].

Questions to witness by Judge, Jury and Assessors.— They can put any questions to a witness in terms of Sections 165 and 166, Evidence Act. Section 165 provides that a judge may, if necessary, ask any question in any form about any fact relevant or irrelevant subject to certain conditions laid down in that section.

1. *Emperor* v. *Mehabli Rama Sail*, 26 Bom. L. R. 706=A. I. R. 1924 Bom. 480.
2. *Harendra Nath Saha* v. *Emp.*, 40 C. L. J. 313=26 Cr. L. J. 807=84. I. C. 451=A. I. R. 1925 Cal. 161.
3. *Emperor* v. *Panchu Das* and *Gobordhone Singh*, 24 C. W. N. 501. F. B.=47 Cal. 671=31 C. L. J. 402.

Evidence in bad livelihood cases.—For this refer to Chapter I on the Security Proceedings in Part II, pages 105-106 ;

CHAPTER X.

EXAMINATION OF WITNESSES.

Examination of witnesses.—The examination of a witness by the party who calls him is called his examination-in-chief. The examination of a witness by the adverse party is called his cross-examination. The examination of a witness, subsequent to the cross-examination by the party who called him, is called his re-examination. Witnesses shall be first *examined-in-chief*, then if the adverse party so desires, *cross-examined*, then, if the party calling him so desires *re-examined*.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. The re-examination shall be directed to the explanation of matter referred to in cross-examination ; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter[1].

Duty of Court.—The moment a witness commences giving evidence which is inadmissible, (e.g., hearsay

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1. Section 138, Evidence Act.

evidence) he should be stopped by the Court[1]. The judge is to decide as to the admissibility of evidence. In case of doubt the Judge should decide in favour of admissibility[2].

Witness summoned to produce document.—A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness[3].

Leading question.—Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question[4].

Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in re-examination except with the permission of the Court. The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

Leading questions may be asked in cross-examination[5].

Cross-examination by accused.—The accused is entitled in cross-examination to elicit facts in support of his defence from the prosecution witnesses, though the facts thus elicited have no relation to the facts

1. *Queen* v. *Pittambar Sirdar*, 7 W. R. 25.
2. *The Collector of Gorakhpur* v. *Palakdhari Singh*, 12 All. 1 (F. B.) *Kali Kishore* v. *Bhusan* 18 Cal. 201 P. C.
3. Section 139, Evidence Act.
4. Section 141, Evidence Act.
5. Section 143, Evidence Act.

to which the witnesses have testified in their examination-in-chief. In course of cross-examination of this character, the defence is entitled in view of the generality of the provision of Sec. 143 of the Evidence Act, to ask leading questions and the Court might, in its discretion under Sec. 154, permit the prosecution to cross-examine the witness. The matter is evidently one in the discretion of the trial Judge and his decision is practically conclusive[1]. Witnesses to character may be cross-examined and re-examined[2]. A man's general bad character is a weak reason for believing that he was concerned in a particular criminal transaction[3].

Cross-examination as to previous statements in writing etc.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved[4]. Statements made by the complainant to the police which are at variance with those made before the Magistrate are admissible in evidence as they are important from the point of view of the defence[5].

Special police diary its use by Court and police officer. —The special diary may be used by the Court to

1. *Amrita Lal Hazra* v. *King Emperor*, 19 C. W. N. 676.
2. Section 140 Evidence Act.
3. *Amrita Lal Hazra* v. *King Emperor*. 19 C. W. N. 676.
4. Section 145, Evidence Act.
5. *Thomas J. H. Arnup* v. *Kedar Nath Ghose*, 30 C. W. N. 835. *E.* v. *Cherath* 26 Mad. 191.

assist it in the enquiry or trial by suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justice between the Crown and the accused; but entries in the special diary cannot by themselves be taken as evidence of any date, fact or statement therein contained. The special diary may also be used by the Court for the purpose of contradicting the police-officer who made it and may be used by the police-officer who made it, and by no witness other than such officer, for the purpose of refreshing his memory. If the special diary is used by the Court to contradict the police-officer who made it, or by the police-officer himself who made it to refresh his memory, the accused person or his agent has a right to see that portion of the diary which has been referred to for either of these purposes, that is to say, the accused person or his agent is entitled to see the particular entry which has been referred to and so much of the diary as in the opinion of the Court is necessary in that particular matter to the full understanding of the particular entry so used, but no more. (*See pages 43 to 46 for further particulars.*)

Cross-examination—right of the accused.—After a charge has been drawn up in a warrant case the accused is entitled to have the witnesses for the prosecution recalled for the purposes of cross-examination. (*See pages 140-142*). In a case the charge was drawn up on the 30th November 1899, and on the same date the accused applied to the Court to recall and cross-examine the witnesses for the

prosecution; the Court, however, refused to allow this, on the ground that the prosecution witnesses had already been cross-examined at a reasonable length and convicted the accused. The case was referred to the High Court; the High Court, on revision, set aside the conviction and ordered a retrial giving opportunity to the accused to cross-examine the witnesses[1]. Where the accused did not apply for the cross-examination of the prosecution witnesses on the date the charge was framed but did so on the next date of hearing and the Magistrate refused the application on the ground that it was too late, the High Court refused to interfere as the accused did not apply for recalling the witnesses for cross-examination on the date the charge was framed and explained. The Magistrate, however, has a discretion to recall the witnesses for further cross-examination at any subsequent stage of the case but the accused has no right to insist upon the witnesses being recalled[2].

Witnesses summoned by prosecution—not called—cross-examination.—On this point Jackson J., *observed* as follows:—"The ordinary practice is, that where a witness for the prosecution is not called on the part of the Crown, he is placed in the witness-box in order that the defence may have an opportunity of cross-examining him; and certainly, where the judge thought it necessary to call one of these witnesses

1. *Zamunia* v. *Ram Tahal*, 27 Cal. 370=4 C. W. N. 469.
2. *Faizali* v. *Koromdi*, 7 Cal. 28.=4 Shome L. R. 142.=5 Ind. Jur. 474.=8 C. L. R. 325.

for the purpose of eliciting some facts which he thought material for the prosecution, the prisoner ought to have been allowed an opportunity of putting any question that he thought necessary in cross-examination."[1] (*See pages 142-43*).

Questions in cross-examinations.—When a witness is cross-examined, he may be asked any questions which tend—

(1) to test his veracity ;

(2) to discover who he is and what is his position in life ; or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture[2]. It is for the Court to decide if any question can be put to the particular witness and if the witness should be compelled to answer such questions. Questions imputing bad character to a witness cannot be asked without reasonable ground. For example a witness, of whom nothing whatever is known cannot be asked at random whether he is a thief or a dacoit but if the lawyer is instructed by supplying particulars that the witness is a thief, such a question may be allowed. Indecent and scandalous questions and questions

1. *In the matter of the Empress* v. *Girish Chunder Talukdar*, 5 Cal. 614=5 C. L. R. 364.
2. Section 146, Evidence Act.

intended to insult or annoy cannot be put in cross-examination[1].

Hostile witness.—Cross-examination.—The Court may permit a party to cross-examine its witness if the witness is found to be hostile. Sec. 154 of the Evidence Act says nothing as to declaring a witness hostile but provides that the Court may in its discretion permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party[2].

The effect of allowing a party to cross-examine his own witness is to discredit that witness altogether so far as the case for that party is concerned[3].

Evidence of hostile witness,—value.—This matter has been separately dealt with. See the Full Bench case re : *Profulla* v. *Emperor*[4]. This Full Bench case modified the previous Calcutta decision on the point.

Examination of witnesses on commission.—A Presidency Magistrate, a District Magistrate, a Court of Sessions and the High Court may order examination of witnesses on commission when the attendance of such witnesses cannot be procured without an amount of delay, expense, or inconvenience which may seem unreasonable.

The details as to examination on commission are to be found in Section 503 Cr. P. C. Where the com-

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1. Sections—149 to 152 Evidence Act.
2. *Baikuntha Nath Chattoraj* v. *Prasannamoyi Debya*, 27 C. W. N. 797.
3. *Makbul Khan* v. *King Emperor*, 32 C. W. N. 872.
4. 35 C. W. N. 731 F. B.=53 C. L. J. 427=A. I. R. 1931 Cal. 401.

plainant is a *Pardanashin* lady, she (being party) cannot be examined on commission, but the Magistrate may arrange for her examination in Court in a way as would secure her privacy. She should be examined in accordance with law in presence of the accused[1].

There is no provision in the Criminal Procedure Code which protects *Pardanashin* ladies from appearing in a Court of Justice. It cannot be admitted as a general principle that *Pardanashin* ladies, whose evidence is required in Criminal trials, are to be examined at some place other than the Court house itself.

Where a Magistrate considered it necessary to take the evidence of a *Pardanashin* lady, who objected to appear in the Court, the High Court directed the Magistrate to make arrangements so as to take the lady's evidence either in an empty Court-room in the persence of the accused, pleader for the prosecution and himself or if no empty Court-room were available, in his own private room or some other room in the Court building[2].

The parties to any proceeding in which a commission is issued, may forward interrogatories in writing which the Magistrate or the Court directing the commission may think relevant to the issue, and the Magistrate or the officer to whom the commission is

1. *In the matter of the petition of Farid-un-nissa,* 5 All. 92= 2 A. W. N. (1882), 184.
2. *In the matter of the petition of Basanta Bibi,* 12 All. 69= 9 A. W. N. (1889) 202.

directed or to whom the duty of executing such commission has been delegated, shall examine the witness upon such interrogatories[1].

Prayer for commission before a Sub-ordinate Magistrate :—If it appears to a sub-ordinate Magistrate that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, such Magistrate is required to apply to the District Magistrate, (stating the reasons) and the District Magistrate may issue a commission if he thinks fit to do so[2].

Commission is issued only where the witness appears to be a material witness[3].

CHAPTER XI

RELEVANT FACTS.

Relevant Facts :—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places[1]. The evidence against a prisoner charged with having voluntarily causing grievous hurt consisted of a statement made in the presence of the prisoner by the person injured to a third person, immediately after the offence the statement

1. Section 505 Cr. P. C.
2. Section 506 Cr. P. C.
3. *Dinabandhu vs. Hassan Ali* 33 C. W. N. 1088.

1. Sec. 6 The Indian Evidence Act.

was held admissible under sec. 6 and sec. 8 of the Indian Evidence Act[1].

Hearsay evidence of the statement of a bystander as to an occurrence would be admissible in evidence as a part of the *res gestae* only if it was made at the time the transaction was taking place or so shortly before or after it as to form part of the transaction. If the transaction had terminated when the statement was made it would be irrelevant. It would be dangerous to accept the statement of a bystander made after the conclusion of the transaction, when an interval has elapsed disconnecting the thread of the transaction[2].

Facts which are the occasion, cause or effect of facts in issue are relevant. The question is whether A. murdered B. Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts[3]. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The question is, whether A committed a crime. The fact that A absconded after receiving a letter, warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant. Absconding is but slight evidence of guilt[4].

Proof of motive or previous ill-will is not necessary to sustain a conviction for murder. But the guilt

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1. *In the matter of the petition of Surat Dhobni*, 10 Cal. 302.
2. *Chain Mahto and ors.* v. *The Emperor*. 11 C. W. N. 266.
3. Sec. 7. The Indian Evidence Act.
4. *Queen* v. *Sorob Roy*. 5 W. R. 28.

of prisoner must be clearly proved before he can be convicted[1].

Facts necessary to explain or introduce relevant facts are relevant.—A is accused of a crime. The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under sec. 8, as a conduct subsequent to and affected by the fact in issue. The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went is relevant, as tending to explain the fact that he left home suddenly. The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent[2]. Evidence of the possession and attempted disposal of counterfeit coins is relevant on a charge of uttering such coins[3].

Evidence of the Magistrate conducting an indentification parade is admissible under sec. 9 of the Evidence Act[4].

Conspiracy.—Things said or done by conspirators in reference to a common design are relevant[5].

Identification by voice.—Such evidence may be admissible under sec. 9 of the Indian Evidence Act. Propriety of indentification by voice was condemned by Mukherjee J. in the case of *Arshed* v. *E*[6].

1. *Queen* v. *Jaichand Mundle and others.* 7 W. R. 60.
2. Section 9. The Indian Evidence Act.
3. *Queen Empress* v. *Nur Mohomed.* 8 Bom. 223.
4. *Abdul Wahab* v. *King Emperor*, 47 All. 39=5 L. R. A. Cr. 1933=A. I. R. 1925 All. 223.
5. Section 10 of The Indian Evidence Act.
6. 30 C. W. N. 166.

Conspiracy case.—Things said or done by conspirator in reference to a common design are relevant under section 10 of the Indian Evidence Act. The object of section 10 is merely to ensure that one person shall not be made responsible for the acts or deeds of another until some bond in the nature of agency has been established between them and the acts, words, or writing proposed to attribute vicariously to the person charged must be in furtherance of the common design after such design was entertained[1].

If two persons conspire together to commit an offence, each is regarded as being the agent of another.

When facts not otherwise relevant become relevant.—(Sec. 11) Facts not otherwise relevant are relevant—(1) If they are in consistent with any fact in issue or relevant fact.

(2) If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. The question is, whether A committed a crime at Calcutta on a certain day. The fact that, near the time when crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant[2]. The absence of an entry of payment in an account book is a relevant fact not under sec. 34 but under secs.

1. *Indra Chandra Narang* v. *Emperor*, 116 I. C. 756=30 Cr. L. J. 646=A. I. R. 1929 Pat. 145 (F. B.)
2. Section 11. The Indian Evidence Act.

9 and 11 of the Indian Evidence Act[1]. When the question is whether a man is a habitual cheat, the fact that he belongs to an organisation formed for the purpose of habitually cheating in concert is relevant under sec. 11 of the Evidence Act[2].

Facts showing existence of state of mind, or of body or bodily feeling.—This is relevant under section 14 of the Evidence Act.

Existence of bad feeling—state of mind intention. Previous conduct.—A is tried for the murder of B by intentionally shooting him dead. The fact that A on other occasions shot at B, is relevant, as showing his intention to shoot B. The fact that A was in the habit of shooting at people with intent to murder them is irrelevant[3].

Evidence with regard to a previous act of fraud alleged to have been committed by an accused person who is on his trial on a charge under sec. 420, I. P. C. can not be admitted under sec. 14 of the Indian Evidence Act[4].

When a person is charged with having committed the offence punishable under sec. 124-A of the Indian Penal Code, his intention may be inferred from one particular speech, article or letter, or from that speech, article or letter considered in conjunction

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1. *Gangaram Agarwala* v. *Lachiram Kishen Dyal*, 19 C. W. N. 611.
2. *Kalu Mirza* v. *Emperor*. 14 C. W. N. 49.
3. Sec. 14, Evidence Act illustration (0)
4. *Gokul* v. *King Emperor*.=29 C. W. N. 483.

with what such person has said, written or published on another or other occasions[1].

In a case under sec. 124-(A) I. P. C. other articles showing the intention of the writer are admissible in evidence[2].

Facts bearing on question whether act was accidental or intentional.—These are relevant under section 15 of the Indian Evidence Act. A is accused of fraudulently delivering to B a counterfeit rupee. The question is, whether the delivery of the rupee was accidental. The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental[3].

Existence of course of business when relevant.—When there is a question whether a particular act was done, the existence of any course of business according to which it naturally would have been done, is a relevant fact. The question is, whether a particular letter reached A, The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant[4].

1. *Queen Empress.* v. *Amba Prasad.* 20 All. 55 (F. B.) = 18 A.W.N. (1898). 1.
2. *Queen Empress* v. *Jogendra Ch. Bose.*, Editor of Bangabashi 19 Cal. 35.
3. Sec. 15., Evidence Act. Illustration (c).
4. Section 16, The Indian Evidence Act. Illustration (b)

CHAPTER XII.

LEGAL PRESUMPTIONS.

Birth during marriage—legitimacy.—The fact that any person was born during the continuance of a vaild marriage between his mother and any man, or within two hundred and eighty days, after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten[1].

Where there is no evidence of want of access, the presumption of legitimacy arising from conception during a valid subsisting marriage is conclusive[2]. In England the positive rule at common law is that neither the husband nor wife can be examined for the purpose of proving of nonaccess during marriage except in any proceeding instituted in consequence of adultery[3]. But in this country a wife can be examined as to non-acces of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of her children[4].

Legal Presumptions.—The Court may presume, under section 114 of the Indian Evidence Act, the

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1. Sec. 112, The Evidence Act.
2. *Micholas* v. *Asphar*, 24 Cal. 216 at page 222.
3. Guardian of N. V. *Tomkinson* 4 C. P. D. 343.
4. *Rozario* v. *Ingles*, 18 Bom. 468.

existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case.

The Court may presume.—(*a*) that a man who is in possesssion of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

(*c*) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(*d*) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existance ;

(*e*) that judicial and official acts have been regularly performed ;

(*f*) that the common course of business has been followed in particular cases ;

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who with holds it ;

(*h*) that if a man refuses to answer a question which he is not compelled to answer by law, the answer if given, would be unfavourable to him ;

. (*i*) that when a document creating an obligation is in the hands of the obliger the obligation has been discharged[1].

Conflict between Presumption of Innocence and any other Presumption :—Where in a criminal case there is a conflict between presumption of innocence and any other presumption, the presumption of innocence prevails[2].

The fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired, may be strong circumstantial evidence against the accused but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances.

If there are two persons who answer the above description the circumstantial evidence loses its weight very substantially[3].

Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be persumed; criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law[4]. (*See page 164*).

Withholding of important witnesses.—The withholding by the Prosecution of important witnesses who were in one way or other intimately connected with the transaction or the occurance and the state

1. Sec. 114. The Evidence Act.
2. *Ashraf Ali* vs. *K. E.* 21 C. W. N. 1152.
3. *Nibaran Chandra Roy* v. *K. E.* 11 C. W. N. 1085.
4. *Queen* v. *Nobokristo Ghose*, 8 W. R. 87.

of things gives rise to the irrestible inference that if they were examined they would not have corroborated the prosecution story[1].

Where a material witness for the prosecution is not called—the judge in charging the jury should direct them that it might be presumed that if examined the evidence of the witness would not have supported the case for the prosecution[2].

Evidence of accomplice Corroboration.—The previous statements of an accomplice may serve to corroborate the evidence given by him at the trial.

Per Benson j—"There is nothing in the illustration (b) to section 114 which overrides or renders nugatory the plain and explicit declaration contained in section 133 or which requires us to hold that the evidence of an accomplice must always and in all circumstances be regarded as unworthy of credit unless it is corroborated in material particulars or which requires us to hold that it is not open to the Court to act on such evidence even when the Court believes it to be perfectly true"[3].

In dealing with the evidence of an approver the Judge should tell the Jury that the sort of corroboration that is required is corroboration in material particulars tending to connect each of the accused with the offence[4].

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1. *E.* v. *Dhunu Kazi* 10 C L. R 151=8 Cal. 121.
2. *See page 163. Charge to jury. Hachuni* v. *E.* 34 C. W. N. 390.
3. *Muthukumara suami Pillai* v. *K. E.* 35 Mad. 397=14 I. C. 896=13 Cr. L. J. 352=1912 M. W. N 519=12 M. L. T. 1.
4. *Hachuni Khan* vs. *K. E.* 34 C. W. N. 390.

Possession of stolen property—recent possession :— The possession of a person six months after the commission of a docoity of articles stolen in that dacoity, such articles consisting of jewellery of a very ordinary type and by no means distinctive can not form basis of a conviction for participation in dacoity[1]

In the case of *Queen Empress* v. *Burke*[2]. It was held that the presumption did not arise in a case in which a stolen pocket handkerchief was found in the possession of the accused more than a month after the date of the theft. In the case of *Ina Sheikh* v. *Queen Empress*[3], a common brass drinking cup was stolen in October and was found in the possession of the accused in September next year it was held that the prossession was not such recent possession as came within the purview of the illustration (a) to section 114 (Edidence Act) and that the presumption against the accused was so slight that taken by itself he ought not to have been called upon to explain how its possession was acquired.

Possession of property which has been stolen is at best evidence of theft, if recent[4].

It must be proved that the prisoner received or retained plundered property knowing it to be plundered property, before he can be convicted under section

1. *Emperor* v. *Sughar Singh*, 29 All. 138=3 A. L. J. 808=1906 A. W. N. 314=4 Cr. L. J. 436=1 M. L. T. 449.
2. 6 All. 224.=4 A. W. N. (1884) 55.
3. 11 Cal. 160.
4. *Queen* vs. *Promeshur Aheer*, 23 W. R. 16.

412 of the Penal Code[1]. Such knowledge or belief can not be presumed from mere possession of stolen property in the case of a person, who being charged merely as a receiver was *exhypothesi* not present at the dacoity[2].

Where in a case under section 411 I. P. C. the stolen property was found in the possession of the accused more than three months after the theft— there was no presumption that the accused knew or had reason to believe the property to be stolen[3].

The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity. (See *Surendra* v. *E Supra*). It is necessary that the possession be clearly traced to the accused. If other people than the accused has access to the place where the stolen property is found, the presumption becomes very weak against the accused[4]. Recent and unexplained posses sion of the stolen property acquired by murder and robbery would be presumptive evidence against the prisoners of both murder and robbery[5]. The Judge

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1. *Bishoo Manjee*, Appelant, 9 W. R. 16.
2. *Surendra* v. *E.* 41 C. W. N. 639. *In this case conviction u/s 412 I. P. C. was set aside and the accused was convicted u/s.* 411 I. P. C.
3. *Joeenullah Bepari* vs. *K. E.* 22 C. W. N 597.
4. *Empress* v. *Malhari* 6 Bom. 731.
5. *Q. E.* vs. *Sami.*, 13 Mad. 426=1 Weir 290.

should tell the Jury that the presumption does not arise unless the possession be recent[1].

Old state of things—continuance.—It can be presumed that the old state of things does continue until the contrary is proved[2].

Possession—title.—Where two adverse parties are trying to make out a possession of twelve years, and the evidence is conflicting and not conclusive on either side, the presumption that possession goes with the title must prevail[3].

Non-Production of documentary-evidence :—The presumption is that if produced the document would have gone against the person withholding it. See the remarks of Harington and Mitra J. J. in the case of *Maharani Beni Pershad Koeri* v. *Goberdhan Koeri*[4].

Honesty and discretion presumption of Public servant .—It is a sound principle of legal presumption that in the absence of proof to the contrary credit should be given to public officers who acted *prima facie* within the limits of their authority for having so done with honesty and discretion[5].

Long Co-habitation—marriage.—Long co-habitation may give rise to a strong presumption of marriage[6]

1. *Hathem* v. *K. E.* 24 C. W. N. 619.
2. *Mahomed Ali Khan* vs. *Khaja Abdul Gunny* 9 Cal. 744 (F. B.) =12 C. L. R. 257.
3. *Dharm Singh* v. *Hur Pershad Singh* 12 Cal. 38.
4. 6 C. W. N. 823. *Raghunath* v. *Hoti Lall* 1 A. L. J. 121.
5. *Donald Weston* vs. *Peary Mohan Dass* 18 C. W. N. 185.
6. *Alikhan* vs. *Musammat Kaniz Fatima.* 14 C. W. N. 690. *Ma Wun Di* vs. *Ma Kin.* 12 C. W. N. 220. (Privy Council) (Burma Case).

unless it is shown that the connection between the parties originated in concubinage[1].

There can be no conviction in a criminal case, where proof of marriage is essential, based on mere presumption. In such a case strict proof of marriage is necessary.

Sanity.—Law presumes every man to be sane. But whose lunacy was once proved—it must be presumed that lunacy continues until the presumption is rebutted[2].

CHAPTTR XIII.

CIRCUMSTANTIAL EVIDENCE.

Circumstantial Evidence.—Lord, Chief Justice Abbot observed, "In a great portion of trials, as they occur in practice, no direct proof that the party accused actually committed the crime is or can be given ; the man who is charged with theft is rarely seen to break the house or take the goods ; and in case of murder, it rarely happens that the eye of any witness sees the fatal blow struck, or the poisonous ingredient poured into the cup"[3].

The law on this point was also very emphatically declared by Baron Parke J., in Tawell's case. His lordship observed "Circumstantial evidence is the only evidence which can in cases of this kind (grave crimes

1. *Indi* v. *Jaimal* 98 I. C. 887.
2. *Amanchi* v. *Padmanabha* 40 Mad. 660.
3. Wills' Principle of Circumstantial Evidence.

committed in secrecy) lead to discovery. There is no way of investigating except by the use of circumstantial evidence ; ......it most frequently happens that great crimes committed in secret, leave behind them some traces, or are accompanied by some circumstances which lead to the discovery and punishment of the offender......... Direct evidence of persons whose veracity you have no reason to doubt is the best proof; but on the other hand, it is equally true with regard to circumstantial evidence, that the circumstances may often be so clearly proved, so closely connected with it or leading to one result in conclusion, that the mind may be as well convinced as if it were proved by eye witnesses.......... The point to consider is whether, attending to the evidence, you can reconcile the circumstances adduced in evidence with any other supposition than that he (the prisoner) has been guilty of the offence"[1].

An accused was convicted under section 380 I.P.C., for theft of currency notes on purely circumstantial evidence e.g., (1) that the accused entered the office in absence of the officer-in-charge, (2) that the petitioner's brother-in-law was present at the time when two of the stolen notes were cashed, (3) that the accused who was a peon on Rs. 5 a month, deposited Rs. 484 in Post Office some time after the occurrence. Their lordships pointed out regarding the first point that at or about the time of occurrence some other men might have also entered the room. As regards the second point it was observed that the petitioner

1 *Reg vs. Tawell*, Aylesbury Spring Assizes, 1845.

cannot be made responsible for the dishonest act of his brother-in-law. As to the third point their lordships stated that it is not shewn that the money deposited by the accused was proceeds of the theft In the result the conviction was set aside and it was held that the circumstantial evidenee must be conclusive and exclude the possibility of guilt of any other person or must point conclusively to the complicity of the accused in the crime[1]. It has been pointed out by their lordships in the Privy Council case of *Sreeman chandra* v. *Gopal Chander Chackerbutty*[2] and in many other cases that a Court is not justified in deciding a case upon mere suspicion and without legal evidence in support of the charge. The risk of deciding a case largely based on circumstantial evidence was pointed by Jenkin C. J., in the case of *Barindra* v. *E*[3]. Circumstantial evidence is very good evidence and conviction can be based upon it provided, as stated above, it points out conclusively to the complicity of the accused in the crime. Circumstantial evidence like all other evidence should be carefully tested before it is accepted as conclusive. To sum up it may be laid down as an elementary rule of law that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explation on any other reasonable hypothesis than that of the guilt of the accused.

1. *Chiraguddin* vs. *E*, 18 C. W. N. 1144.
2. 7 W. R. 10 (P. C.)
3. 37 Cal. 467=14 C. W. N. 1114=7 I.C., 359=11 Cr. L. J. 453.

CHAPTER XIV.

EVIDENCE AS TO CHARACTER.

Character-Evidence as to.—In criminal proceeding the fact that the person accused is of a good character is relevant[1].

In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant or in cases in which the bad character of any person is itself a fact in issue.

A previous conviction is relevant as evidence of bad character[2].

Records of previous convictions should not be put in until the close of the trial, as they can only be used after conviction in determining the measure of punishment[3].

It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour, that the fact of his being an habitual offender may be proved by evidence of general repute[4].

In trial of offences under section 401 of the Penal Code, where the other evidence in the case has established 'association' for purposes of habitually

1. Section 53. The Evidence Act.
2. Section 54. The Evidence Act.
3. *Q. Emp. vs. Shiboo Mundle*, 3 W. R. 38.
4. *Emp. vs. Bidhyapati*, 25 All. 273=23 A. W. N. 36.

committing theft, evidence of previous convictions whether for offences against property or for bad livelihood has always been admitted, not as evidence of character but as evidence of habits. Of such evidence, conviction for bad livelihood is more cogent than isolated cases of theft.[1]

CHAPTER XV.

PREVILEGED COMMUNICATIONS.

Previleged communications :—(1) These are communications during marriage (sec. 122).

(2) Official communication (sec. 124).

(3) Information as to commission of an offence received by a Magistrate or Police or Revenue Officer (sec. 125).

(4) Professional communication made by a client to lawyer. A, a client, says to B, an attorney—'I have committed forgery and I wish you to defend me.' As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure. (sec. 126). A witness is not bound to disclose previleged communication. A witness, however, is not excused from answering questions on the ground that the answers will incriminate him.

1. *Bonai* v. *K. E.* 15 C. W. N. 461.

CHAPTER XVI.

EVIDENCE IN BAD LIVELIHOOD AND GANG CASES.

Evidence in bad livelihood case under section 110 Cr. P. C—In cases under section 110 Cr. P. C., evidence of general repute must form the main basis of the prosecution. Under section 117 (3) Cr. P. C., evidence of general repute is admissible to prove that a person is a habitual offender. (*See pages 105—106 supra*).

Evidence of general repute may be corroborated by proof of :—

(i) Previous convictions ;

(ii) Want of any known means of livelihood or manner of living in excess of such means ;

(iii) Association of the accused with other bad characters ;

(iv) Absence of the accused from his house, especially at night ;

(v) Occurrence of crimes at or near the place visited by the accused, coincident with such absence. (*for nature of proof required see pages 111—112 supra*)

Evidence admissible in Gang cases—Much evidence, which will not ordinarily be admissible in Criminal cases, are admissible in cases under sections 400 and 401 I. P. C., as the persons accused in these cases are in fact members of a conspiracy and consequently section 10 of the Evidence Act will apply. Previous convictions of dacoity and of theft are admissible in case under sections 400, 401, I. P. C.

respectively. Under explanation to section 14 of the Evidence Act and according to many authorities evidence of bad character under section 54 is relevant in cases under sections 400, 401 and 402 I. P. C. Much of the evidence enumerated under the different heads above will be admissible under section 11 of the Evidence Act[1].

CHAPTER XVII.

SEARCH LISTS.

Search lists—oral evidence of search.—Where a search has been conducted under the provisions of the Criminal Procedure Code, the search list is not the only evidence admissible as to the matter dealt with therein. Section 91 of the Evidence Act does not exclude oral evidence of what took place at the time of search[2]. When a search has been conducted under section 103, Criminal Procedure Code, evidence can be given regarding the things seized in the course of the search and the places in which they were found in addition to the evidence of the list which the law directs to be drawn up relating to the particulars of the property found.

For value of search list as evidence see pages 90—91 supra and the cases referred to therein. For how to conduct a search see page 89.

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1. Bengal Govt. Or. No 3571 P to D dated 6th Sept., 1912.
2. *Elamathan* v. *Emp.* 33 Mad. 416=11 Cr. L. J. 136=5 I. C. 438=7 M. L. T. 362 and *Abdul Khadir* v. *Q. Emp.* (Weir's "Criminal Rulings," 4th edn., Vol. II, p. 515)

PART VI

DISPUTED HAND-WRITING ; THUMB-IMPRESSION ; EXPERT EVIDENCE, AND MEDICAL EVIDENCE.

PART VI

CHAPTER I.

DISPUTED HAND-WRITING.

Basic characteristics, etc.—Some admitted signatures or unchallenged documents are compared with the disputed documents or signatures alleged to be in the hand-writing of the same man. Each person has a peculiar habit of writing and a forger when forging a document or signature unconciously gives indication of his habits in the writing. These are technically known as the *basic characteristics*. In long documents punctuations, peculiar spellings, difference of movements while writing may help an expert in ascertaining the habit of the writer. If two writings disclose a difference of movements in the *basic characteristics*, they are not in the hand of the same man.

Ordinarily writings may be divided into the following five classes :—

1. *Finger-writing* ;
2. *Hand-writing* ; or *Fore-arm writing*.
3. *Wrist-writing* ;
4. *Elbow-writing* ; and
5. *Shoulder-writing*.

In *finger-writing* the fingers move, while writing. If the fingers holding the pen do not move at all but the hand moves while writing, then it is called *hand-writing*. If the wrist alone moves while writing—then it is *wrist-writing*. Where elbow is the pivot and

the wrist does not move but the fore-arm moves, the writing comes under the class of *elbow-writing.* In case of writing by a person, while standing, on a big piece of paper or board, shoulder is used as the pivot for writing and this is called *shoulder-writing. In case of finger-writing,* ordinarily each letter is written separately and distinctly by the moving fingers. In such a case writing is rather slow and curves and the strokes are generally unjoint. This happens because such a writer lifts his pen very frequently causing unjoint strokes. *In wrist-writing,* pen goes with the movement of the wrist and the lines have a tendency to ascend. In case of writing a big document by a wrist-writer slanting angles are noticeable, unless the wrist-writer shifts his pivot from time to time. *In fore-arm writing,* arches will be seldom noticeable and the strokes of the pen will be longer. *In shoulder-writing,* the letters will be generally big and distinct. An expert will tell you under what class the disputed writing comes. You will have to examine yourself whether the letters are straight, the lines are parallel showing speed, if the modulation of pressure is regular, and whether there are curves, etc., in the disputed and admitted writings. Besides you will have to note whether there are tapering points or thick blunt points in the two kinds of writings. You may ask the expert witness the reasons for his holding that the two writings are by the same hand (or not in the same hand), if the witness fails to assign good reasons, his evidence will be of little or no value. In ordinary cases questions regarding curves and the

nature of lateral strokes in both the writings, and whether the lines are horizontal in both or whether the writing is uniformly thick or fine in both should be put. In vernacular documents spelling will some times help you, as some writers spell some words in a peculiar way. Cross-examination may be directed in case of long documents to punctuations, as every man has his own way of punctuating his writing. Questions may also be asked as to whether both the writings are slow and careful; whether the up and down strokes are equally thick and whether the writing habit of a person is liable to modifications at intervals. Before taking up cross-examination of an expert it is better to study some treatise on handwriting and to acquire some knowledge of the subject so that the expert witness may not from time to time venture to assert his opinion without assigning good reasons for the same.

CHAPTER II.

DISPUTED HAND-WRITING (continued).

Strokes, curves penpressure, character of letters, difference in space between lines and letters: writing of old people: forged documents on old papers, etc.—Methods of comparison. Every person gives characteristic strokes and curves to his writing. This habit which is mechanical is seldom similar in two persons. The writings vary according to the difference in

posture while writing and the posing of the pen. A man may write slowly or swiftly and this will make difference in the two writings but the *basic characteristics* of the two writings will remain the same. The writings vary according to the difference in the writer's *pen-presentation, pen-pressure and alignment.* The way of studying a hand-writing is to study the nature of the strokes and the curves in the writing. Usually thumb and one of the fingers are used in writing. Every person use the thumb, but the use of the other finger may vary in different persons. Some invariably use the thumb and middle finger, others may use the index finger or the middle finger and the thumb. The habit of writing once acquired almost invariably remains the same. A hand-writing expert will be able to tell you, on an examination of a writing, which fingers were used in writing and this mode helps in the comparison of the two writings.

The *pen-pressure, i.e.* the pressure given to a pen while writing, varies in different persons. Some write with light pressure, others are used to hard or moderate pressures ; *thickness of the letters vary according to the pressure used.* Besides different persons have different ways of arranging their writing and this is more or less automatic ; space between the lines is almost or proportionately same in the same writer. *The alignment in writing varies with the pivot used at* the time of writing. As has already been stated, a man may make the wrist or fore-arm as his pivot, another may make elbow as his pivot, while a third

man may use shoulder as his pivot while writing in standing posture (*e. g.* writing on black-board). The style of writing varies with the pen-presentation, *i. e.* how the pen is held while writing. Some write in a straight line. In some writings the lines either ascend or descend ; this is technically known as *direction of writing*. Some people by habit write fast while others are rather slow ; this *mode of writing* differs in different persons. *Fast and slow writings are easily distinguishable.* The angles and curves vary in different writings.

In some writings letters are distinct. But they may be either vertical or slanting. In others the lines are as a rule slanting and never vertical. These afford good materials for comparison. Some lift the pen at intervals showing breaks, while others continue till the end of the line. When the pivot is same, writing of the same man may be somewhat different according to the pen presentation. *In wrist writing, letters become angular while in fore-arm writing, which is ordinarily rapid, the letters are generally distinct.* Experts from their experience can tell at what speed a particular letter or deed was written. A forger while imitating a writing often halts and lifts his pen causing breaks, or fails to give the same uniform pressure as the original writer and the thickness of the letters in the forged writing consequetly vary. Besides, in forged writing the easy flow of the writing is often disturbed ; these afford good indications for detecting forgery. An honest expert carefully compares the characteristics of the

admitted and disputed writings before coming to his conclusion.

Free-hand forgeries are somewhat easy to detect. When a signature is forged by tracing, the two writings apparently look to be of the same hand and it is difficult to detect forgery unless very carefully examined. In the forged writing some characteristics of the genuine writing may be wanting. Experts use marked flat rulers for ascertaining difference in the alignments in the admitted and disputed writings. With the help of the ruler slight differences in the positions of the lines (straight or otherwise) can be easily determined.

Comparison of the individual letters in the admitted and disputed writings affords good material for detecting forgery. The shape of the letters, (*e. g.* thick, round, curved, tall, etc.) and their heights require good attention. Some writers do not write all the letters of a word distinctly and some use very small letters at the end. This peculiarity in writing deserves careful study. In writing some space is invariably left between the different words. Measurement of this space in the admitted and disputed writings sometimes affords good material. The space between the letters in a word may be compared with advantage. The angle created between the pen and the paper at the time of writing, can be measured by experts with the help of instruments. Pen-pressure, (*i. e.* the pressure given to the pen by the finger while writing) makes the letters in the writing thick, medium or thin and

this when compared in the two writings may some times lead to the ditection of forgery. In some writings the top portions of the letters are thin due to the reduction, by habit, of pressure at those points.

Experts as a rule compare the angles and curves of the different writing. The nature of the curve is almost same or proportionately same in all writings by the same man. *There may be curves leaning towards the right or leaning towards the* left. *This is an important characteristic.* It must not however be forgotten that in the writings of the same man, the curves may slightly differ according to the pivot or pen-pressure used at different times. *The angles and curves in the admitted and disputed writings are important things to notice.* If you find marked differences, you should place them before the Judge and the Jury. For the facility of comparison, it is better to get photographic enlargements of the two writings.

The forger sometimes retouches his letters to make them appear like genuine. This retouching, evidently done by using the pen for the 2nd and the 3rd time leaves distinct break marks in the paper. In photographic enlargements these breaks will be distinctly noticeable. In a genuine writing the writer may some times retouch his letters to make them look more distinct. This habit, if any, can be detected in the admitted writing. *In some cases of forgeries continuity may be disturbed due to penlift at points. This may happen even in forgeries by tracing. Free-hand forgery often looks clumsy and is not as distinct as the genuine writing as the process of forgery is executed*

rather slowly. Due to this slowness pen-pressure and pen-presentation differ in the original and the forged writing. It is difficult to forge a *pucca* hand-writing, while it is easy to imitate the hand-writing of beginers. Carefully study the breaks, curves, angles, space between the lines in the admitted and suspected writings.

Old people whose hands shake while writing produce legible but shaky letters. These peoples cannot write in the same way at different intervals. So twists and turns in genuine writings of old people may vary, and it is quite unsafe to declare one of the genuine writings as forgery by hasty comparison. Lengthy documents afford scope for better comparison of spellings, punctuations, space between the lines, words, letters, pen-pressure, curves and angles.

In forging documents old stamps are generally used and the forger tries to avoid writing in the brittle folding parts. If in a lengthy document, you find that there is no writing anywhere on the folded parts you can very well argue that the document could not have been folded after it was written in such a peculiar way. In *Khata* (account books) sometimes false entries are made in blank spaces left for creating evidence. These new writings appear invariably in different ink and are not so free as the old ones and in most cases the entries are made in small letters for want of sufficient space.

In forged documents in old papers or stamps there may be indications of ink soaking at places. This deserves careful study. Sometimes, new portions

are added between the two old lines and it becomes necessary to judge whether this interlineation was in existence at the time the original document was written and executed. Examine the ink of the suspected newly added portion and note if there is indication of ink soaking. You can also examine the contents of the whole document and consider whether the interlineation is consistent with the other parts of the deed.

When a man denies execution of a document and he is asked to write his name on a strip of paper in Court, he never writes a free-hand but invariably writes slowly and tries to disguise his natural writing. Comparison of this writing with the writing in the document in question seldom gives satisfactory result and the Court as a rule has to decide the case on other evidences available.

CHAPTER III.

Value to be attached to the evidence of Hand-writing Expert.—It has been held by the Calcutta High Court that the opinion of a hand-writing expert regarding a signature when he is not called as a witness and is not subjected to cross-examination, is inadmissible in evidence[1]. *It was held by* Sundara Ayyar and Spencer J. J. in the case of *In Re: B. Venkata*

1. *Mussti Padma Priya Debya* vs. *Dharma Das Deb Sarma* 15 C. W. N. 728.

Row[1] that an accused person should not ordinarily be convicted for forgery on the uncorroborated testimony of a hand-writing expert. The value to be attached to the evidence of the hand-writing expert has been fully discussed in the said case by Sundara Ayyar J. His lordships observes: "Assuming that these documents are in the hand-writing of the appellant, can the evidence given by Mr. (name of expert) be taken as sufficient in itself to prove that Exhibits B,y; and H-I, are in the hand-writing of the accused? His reason for the conclusion arrived at by him is as follows :— "All these writings (i.e., the standard writings given to him for comparison and the disputed writings) are the handi work of one and the same person. All these writings are of the wrist movement, with the pen-presentation between 45 and 55 degrees, of even pen-pressure, of regular sizing whether the writings be large or small or wide, of varied direction, linear and oval sometimes inclining to roundness in style, of ascendant alignment, of even spacing and of well-formed thumb and finger curves." Describing the writing of Vishnumurti *he describes* it thus: "Of the superior finger movement, of a pen-presentation of 35 degrees, of an even medium pen-pressure, of medium sizing, sloping direction, easy execution, close spacing ascendant alignment, and of ordinary defined finger and thumb curves." It will be observed that with regard to pen-pressure, sizing, alignment and

1. 36 Mad. 159 = 22 M. L. J. 270 = 11 M. L. T. 93 = 1912 M.W.N. 125 = 13 Cr. L. J. 254 = 14 I.C. 418).

finger and thumb curves, the witness points to no great difference. The differences no doubt are more prominent in some respect; in the one case it is wrist movement, in the other case superior finger movement. There is no appreciable difference in the angle of the pen-presentation and in the direction. But can it be said that the resemblances between the accused's writing and the disputed writings in these few respects are sufficient to prove with reasonable certainty that the latter are in the hand-writing of the accused ? In cases where a conclusion was based regarding the authorship of a document on a comparison of writing, the expert was generally able to point to marked pecularities in the ordinary writing of the accused which are re-produced in the forged documents, the accused being unable to avoid them. No peculiarity or mannerism of such short is spoken to by Mr. (name of expert). Daniel Ames in his work on forgery observes: "Where a hand-writing is brought into question, it is rare that any one thing can determine the point at issue. It is usually by a more or less extended series of things, the presence or absence of which creates the decisive preponderance of evidence" (page 100) At pages 104 and 105 and in the succeeding pages will be found the manner in which experts in the cases mentioned there were able to bring home to the Court the decided peculiarities which proved the forgery. The learned Vakil for the Appellant also drew our attention to the fact that in this case all the standard writings were put together and the disputed ones also put together separately and the expert

was asked to compare the writings of the one group with those of the other. I by no means doubt that Mr. (name of expert) carried out his comparison with perfect *bonafide*, but it is unfortunate that the expert knew what the prosecution wished to be proved, and that circumstance must in my opinion detract to some extent form the weight to be attached to the expert's testimony. On reference to....................it is found that Mr. (name of expert) before the committing Magistrate merely deposed that in his opinion the disputed documents were in the hand-writing of the accused, he gave no reasons for his opinion. Again I accept Mr. (name of expert) 's *bonafides* as unimpeachable, but the prosecution would have done well to avoid all room for the observation that the witness committed himself at the preliminary enquiry to an opinion given without reasons and then gave reasons for them at the trial before the Sessions Court. He does not say that the hand-writing of the accused is any way peculiar or eccentric, a circumstance which would attach particular weight to evidence of comparision. I am unable by the application of any facts stated in the expert's evidence as to the writings before the Court to come to the conclusion that exhibits B,y and H-I, are in the hand-writing of the accused.[1] In *Lalta Prosad* v. *Emp.*,[1] Pandit Sundar Lal, Assistant Judicial Commissioner of Oudh, refused to convict the accused on the uncorroborated evidence of the hand-writing expert who happened to be the same as in the present case.

1. (1910) 11 Cr. L. J. 114.

The learned Judge found that the corroborative evidence in the case was valuelees in that there was no marked peculiarity in the hand-writing of the accused or anything rare in its style. The learned Judge quotes the following passage from Dr. Lawson's work on the "Law of expert and opinion evidence." —"The evidence of the genuineness of the signature based upon the comparison of hand-writing and of the opinion of experts is entitled to proper consideration and weight. It must be confessed, however, that it is of the lowest order of evidence or of the most unsatisfactory character. We believe that in this opinion experienced laymen unite with the members of the legal profession. Of all kinds of evidence admitted in a Court this is the most unsatisfactory. It is so weak and decrepit as scarcely to deserve a place in our system of jurisprudence". This passage possibly states in too depreciatory terms the value of expert evidence. I am quite prepared to concede that there may be cases in which the peculiarities in the hand-writing of a person are so numerous and striking and there are so many mannerisms of the forger that he has been unable to avoid in committing his forgery that the Court might wellcome to the safe conolusion on expert evidence alone that the writing is that of a particular person. But no help of this kind is afforded us in this case by Mr. (name of expert) Again, this case must be distinguished from those where several independent experts have arrived at the same conclusion by their independent efforts. Pandit Sundar Lal J, refers to two judgments of the

Allahabad High Court *Srikant* vs, *King Emp.*,[1] and *Kali Charan Mukherjee* v. *King Emp*[2]. In the former case Blair and Knox, J. J., observe that "to base a conviction upon the evidence of an expert in handwriting is, as a general rule, very unsafe" and in the second case Justices Richards and Griffin approved of the above observation. In the second case no doubt there were improbabilities arising from the circumstances of the case in the story of the prosecution, but the observations of the learned Judges with regard to the value of expert evidence are none the less valuable. I have no hesitation in the present case in refusing to find the accused guilty on the evidence of prosecution witness No.12 alone without substantial corroboration. I would therefore reverse the conviction of the accused and direct that he be released from custody"[3].

CHAPTER IV.

HAND-WRITING—PROOF Etc.

Opinion as to hand-writing :—When the Court has form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the hand-writing of the person by

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1. 2 All. L. J. 444.
2. (1909) 6 All. L. J. 184., S. C. (1909).
3. In Re : B. Venkata Row ; 36 Mad. 159=22. M. L. J. 270=11 M. L. T. 93=1912 M. W. N. 125=13 Cr. L. J. 254=14 I. C. 418.

whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

The question is, whether a given writing is in the hand-writing of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to and received letters purporting to be written by him. C is B's clerk whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising him. The opinion of B, C and D on the question whether the letter is in the hand-writing of A are relevant, though neither B, C nor D ever saw A write[1].

Hand-writing how to be proved—comparison—similarity.—The Evidence Act does not require the writer of a document to be examined as a witness; nor does section 67 of that Act require the subscribing witnesses to a document to be produced, for proving a document (except in case of documents requiring attestation by law)[2].

The above subject was fully dealt with in the case of *Sorojini Dasi* v. *Haridas Ghose*[3] by Sir Ashutosh Mukherji Kt, J. His Lordship observed as follows—"The ordinary methods of proving hand-writing are, (1) by calling as a witness a person who wrote the

1. Section 47 of the Evidence Act.
2. *Abdool Ali* vs. *Abdoor Rahamun*, 21 W. R. 429.
3. 26 C. W. N. 113.

document or saw it written, or who is qualified to express an opinion as to the hand-writing by virtue of section 47 of the Evidence Act ; (2) by a comparison of hand-writing as provided in sec. 73 of the Evidence Act ; and (3) by the admission of the person against whom the document is tendered. A document does not prove itself, nor is an unproved signature proof of its having been written by the person whose signature it purports to bear. In applying the provisions of section 73 of the Evidence Act, it is important not to lose sight of its exact terms. It does not sanction the comparison of any two documents, but requires that the writing with which the comparison is to be made, or the standard writing as it may be called, shall be admitted or proved to have been written by the person to whom it is attributed, and next the writing to be compared with the standard or in other words the disputed writing must purport to have been written by the same person that is to say, the writing itself must state or indicate that it was written by that person. The sanction does not specifically state by whom the comparison may be made, though the second paragraph of the section dealing with a related subject expressly provides by way of contrast that in that particular connection the Court may make the comparison. A comparison of hand-writing is at all times as a mode of proof hazardous and inconclusive, and especially when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of the counsel and the evidence of the experts." In *Phoodee Bibi* v. *Gobind*

Chunder Roy[1] it was said by the Court that a comparison of signature is a mode of ascertaining the truth which ought to be used with very great care and caution. It is true that the opinions of experts on hand-writing meet with their full share of disparagement at times but at any rate there is this use in their employment, that the appearance on which they rely are disclosed, and can thus be supported or criticised, whereas an opinion formed by a Judge in the privacy of his own room is subject to no such check. And that the aid of an expert may be of value was clearly the opinion of so distinguished a Judge as Mr. Justice Blackburn, who in Reg. V. Harvey (11 Cox C. C. 546) refused to allow a comparison to be made without the help of experts. A comparison of writings has consequently been deemed a mode of ascertaining the truth which ought to be used with very great caution, *Nobin* v. *Rasik Lal* (10 Cal. 1047) and *Kurali Prosad* v. *Anantaram*, (8 B. L. R. 490, 502 P. C.,) specially if no skilled witness has been called to make the comparison, *R.* v. *Silverlock* (2 Q. B. 766) *R.* v. *Harvey* (11 Cox C. C. 546), *Doe* v. *Suckermore* (A & E 703, 734), *Rajendra Nath* v. *Jogendra Nath* (15 W. R. 41) and *Ramesh Chandra* v. *Rajani Kanta* (21 Cal. 1) We must further bear in mind that although from the dissimilarity of signatures, a Court may legitimately draw the inference that a particular signature is not genuine because it varies from an admittedly genuine signature, yet resemblance of two signatures affords no safe founda-

1. 22 W. R. 272.

tion that one of them is genuine"[1]. Section 73 of the Evidence Act does not sanction the comparison of any two documents, but requires, first that the standard writing shall be admitted or proved to be that of the person to whom it is attributted, and secondly, that the disputed writing must itself purport to have been written by the same person.

It is extremely unsafe to come to a finding on a comparison of signature without considering the oral evidence or the probabilities of the case[2].

CHAPTER V.

THUMB IMPRESSION AND EXPERT EVIDENCE.

Evidence of Expert.—Under section 45 of the Evidence Act where the Court has to form an opinion as to the identity of hand-writing or finger impression, the opinions on that point of persons specially skilled in such art or finger-impressions are relevant facts. Such persons are called experts. In the section the words finger-impression were inserted by Act V of 1899. This was done after the decision in the case of *Q. E.* v. *Fakir Mahomed Sheikh*[3]. In the said case their lordships observed that though the comparison of thumb impression was useful, such comparison must

1. *Sarojini Dassi* v. *Hari Dass Ghose*, 26 C. W. N. 113. Read also *Barindra* v. *E.* 37 Cal. 467=14 C. W. N. 1114=7 I. C. 359= 11 Cr. L. J. 453.
2. *Ambika Charan Barua* v. *Nareswari Dasi* 29 C. W. N. 75.
3. 1 C. W. N. 33.

be made by the Court itself; and the opinion of the experts as to the similarity of such impression was not admissible under section 45 of the Evidence Act. But after the amendment referred to above evidence of thumb impression experts is legally admissible in evidence. Impressions of the palm of the hand may be compared, and the opinion of the expert as to similarity or otherwise is also admissible under the above section[1].

It was observed in *Fakir Mahomed's* case that those who have made finger prints their special study have come to the conclusion that their similarity is, as a rule, evidence of personal identity and their dissimilarity will, therefore as a rule, be evidence of the reverse. See also Galton on Finger Prints, Chapters VI and VII.

Method of taking thumb impression.—Printer's ink and olive oil are rubbed on a tin slab and rolled from one side to other and then the ball is lightly and carefully rolled on paper to get a satisfactory thumb mark. In the case of criminals, impressions of all ten fingers and in case of other persons the impression of the left thumb only are taken.

Classification of thumb-impressions.—Some of the impressions contain numerous dotted lines commonly called papillary ridges. These ridges run in different directions and are almost invariable for the same man. The ridges of two persons do not exactly correspond. The impressions of the ridges are

1. *Emp.* v. *Babu Lal*, 52 B. 223=29 Cr. L. J. 410=30 Bom. L. R. 321=108 I. C. 508=10 A. I. Cr. R. 84=A. I. R. 1928 Bom. 158.

divided mainly, according to their appearance, into four classes ; e.g.

(1) Arches i.e., where the ridges are shaped like arches ;

(2) Loops, i.e., where the ridges are almost round ;

(3) Whorls, i.e., where the ridges look like one turn of a spiral ;

(4) Composites, i.e., impressions containing parts which may come under one or more of the above three different heads ;

Photographic enlargments.—Impressions of bloody thumb prints are compared after taking photographic enlargements on glass. The characteristic points of similarity are marked in different impressions for the facility of comparison. The similarity in the ridges mostly help in establishing the identity. In ordinary cases comparison of the thumb prints may be made with help of a powerful magnifying glass. Experts should be consulted whenever there is doubt about the similarity.

Transferring of thumb-impressions.—Major H. Smith, I M. S. has shown that by covering the original thumb-impression with a damp paper and pressing the reverse of the original, mark may be transferred to the damp paper. If another piece of damp paper is pressed on the reverse of impression taken on the damp paper a true copy of the original impression may be obtained. The lawyer has to bear in mind the possibility of forging thumb prints.

Value of comparison of thumb marks.—Great

caution should be exercised in arriving at a conclusion by a comparison of the thumb impression[1]. The accused was alleged to have falsely personated another in registering a document. He was tried before the Court of Sessions on a charge under section 82 C of the Registration Act. An expert, a Sub-Inspector of police, examined in the case deposed that the thumb impressions on the forged document and in the Sub-Registrar's thumb-impression register corresponded to the thumb-impression of the accused. The Jury returned an unanimous verdict of not guilty. The Judge disagreed with the Jury and referred the case to the High Court, under section 307 Cr. P. C., on the ground that the verdict was perverse. Geidt, J. observed, "That though the classification of finger impressions is a science requiring study, and though it may require an expert in the first instance to say whether any two finger impressions are identical, yet the reasons which guide him to this conclusion are such as may be weighed by any intelligent person with good powers of eyesight. In the present case the Sub-Inspector has enumerated nine different marks by which he has come to the conclusion that Ex. 4 is the impression of the same thumb as Exs 1 (d) and 2. I have examined these impressions for myself with the aid of a magnifying glass, and endeavoured to test the Sub-Inspector's reasons. His first reason is that the pattern in the two sets of impressions is the same and his fifth is that the central core or

1. *Baidya nath Dutta* v. *Alef Jan Bibi*, 36 C. L. J. 9.

ridge is the same. These reasons can readily be verified by a comparison of the impressions, but they do not carry us very far, for it is obvious they may co-exist in the thumb impressions of many different persons. With these two exceptions I have been unable to identify the marks enumerated by the witness as existing in the two sets. For instance, the Sub-Inspector's second reason is that the number of ridges between the right delta and the inner terminus is the same. The Sub-Inspector has not mentioned the number of ridges thus indicated, and they are so blurred and run together, that I am unable to count them for myself.

The Sub-Inspector's third reason is as follows: "The fifth ridge below the right delta ends abruptly, also the seventh ridge ends at the same point as the fifth ridge, the third ridge bores a little way and then stops."

I am able to follow these features in Ex. 4 but can not distinguish them in Ex. 1 (d) or in Ex. 2. I need not go in detail through the other distinguishing marks: it is sufficient to say that though I can often perceive them in one impression (generally Ex. 4, in which the ridges stand out the clearest) I am unable to say that they exist in the other impressions.........
....In making these observations, I desire to throw no doubt on the science of finger impressions, or on the validity of the conclusions which may be established from a similarity in their marks. But in the present case

I am of opinion that the similarity of the two sets of finger impressions has not been established"[1].

So where the thumb impressions are blurred and many of the characteristic marks are far from clear, thus rendering it difficult to trace the features, no importance need be placed on the comparison of thumb impressions.

Expert witnesses—their unconcious bias.—These witnesses said Lord Campbell, "Come with such a bias on their minds to support the cause in which they are embarked, that hardly any weight should be given to their evidence"[2].

An expert witness has unconcious bias to support the party which calls him[3].

A cross-examining pleader should get from the expert all the grounds on which the latter bases his opinion, so that the Court may be in a position to attach proper weight to the evidence of the witness. The experts if they are unbiased can render considerable helf to the Court in as much as they have special training and experience in the matter. Where an expert fairly gives his opinion and does not take upon himself the duty of deciding the point in dispute, his evidence is of great value to the Court. Where however, an expert fails to give data in support of his opinion, his evidence is of little value.

1. *Emp.* v. *Abdul Hamid*, 32 Cal. 759=9 C. W. N. 520=2 Cr. L. J. 259.
2. Tracy Peerage case, 10 Clark and Finelly's Rep. 191.
3. *Hari Sing* v. *Lachmi Debi*, 59 I. C. 220=3 Lah. L. J. 110=10 P. W. R. 1921.

Court's duty in judging expert evidence.—A Court should never surrender its will or independence of judgment to an expert. The Court in all cases in which expert evidence is adduced before it should, after giving it such weight which such evidence deserves, make up its own mind upon the issue in respect of which the expert testimony has been given[1]. The Court has to remember that the opinions of the experts are relevant but not conclusive as to the matters to which they relate[2].

Expert evidence.—Corroboration.—A Court should be very chary in accepting an opinion of finger-print—expert as to the age of a thumb mark, as fixing the date of the document—when such a date is markedly opposed to the date which appears upon the document itself so long as no serious extraneous testimony disproves the date which appears on the document[3]. An opinion of an expert witness not based on any well-defined law of nature cannot be taken as decisive, especially where there is direct evidence opposed to it[4].

It is going too far to say that the Court must insist upon corroboration of the evidence of a finger-print—expert. On the other hand the Court must be careful not to delegate its authority to a third party.

1. Re an Advocate, in the matter of, A. I. R. 1935 Rang 178. and *Moosa Golam Ariff* v. *Khoo Soo Ee*, 157 I. C. 82.
2. *Mt. Titli* v. *Alfred*, A. I. R. 1934 All. 273.
3. *Ram Lakhan Pande* v. *Dharam Deo Missir*. 97 I. C. 335= A. I. R. 1926 Pat. 575.
4. *Mansal pleydell of Simla* v. *Emperor*. 96 I. C. 641=27 Cr. L. J. 977=A. I. R. 1926 Lah. 313.

The Court has to be satisfied that the accused is guilty and it cannot hold him guilty, merely because an expert comes forward and says that in his opinion the accused is no doubt guilty. The Court must satisfy itself as to the value of the evidence of the expert in the same way as it must satisfy itself of the value of other evidence. The Court should examine the expert as to how much experience he has had in the way of comparison of finger prints and how much literature on the subject he had studied. Where there are a large number of points of similarity, between the finger impressions, found in the rooms where the offence was committed and in the impressions of the corresponding fingers of the accused, the Court has to rely on the expert upon two distinct points, first of all, on the question of similarity between the two marks, which is a question of fact on which the Court should, with the assistance of the expert satisfy itself, and secondly on the point which is one for expert opinion, whether it is possible to find the finger prints of two individuals corresponding in as many points of resemblance as are shown to exist between the impressions found in the case before the Court and those of the accused[1].

Can Court take thumb impression of accused.—The Court can do so if it thinks relevant for the purpose of deciding the case[2].

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1. *Fakir Mohammed Ramzan* v. *Emperor*. 60 Bom. 187=38 Bom. L. R. 160=A. I. R. 1936 Bom. 151.

2. *Public Prosecutor* v. *Kandasama Theven* 50 Mad. 462=98 I. C. 99=27 Cr. L. J. 1251=A. I. R. 1927 Mad. 696=53 M. L. J. 597.

Expert witness examined on commission.—It is not satisfactory to examine an expert witness on commission and not in the presence of the accused. The evidence of an expert has always to be carefully weighed but, when given on commission, its value is considerably reduced[1].

Palm Impression—Expert Evidence.—Palm impressions are akin to finger impressions and expert evidence relating thereto should on the whole be admitted rather than excluded, to be weighed by the Court and the Jury for whatever it is worth[2].

CHAPTER VI.

MEDICAL EVIDENCE.

Evidence of medical witnesses.—The deposition of a Civil Surgeon or other medical witness taken and attested by a Magistrate in the presence of the accused, or taken on commission may be given in evidence in any enquiry, trial or other proceeding under the Code of Criminal Procedure, although the *deponent* is not called as a witness. The Court, if it thinks fit, may summon and examine such deponent as to the subject-matter of his deposition[3].

1. *Nur Din* v. *Emperor*. 10 Lah. L. J. 235=108 I. C. 369=29 Cr. L. J. 377=9 A. I. Cr. R. 561=A. I. R. 1928 Lah. 533.
2. *Emperor* v. *Babu Lal*, 52 Bom. 223=29 Cr. L. J. 410=30 Bom. L. R. 321=108 I. C. 508=10 A. I. Cr. R. 84=A. I. R. 1928 Bom. 158.
3. Section 509 Cr. P. C.

In all serious cases such as of murder or manslaughter where the medical evidence is material, a proper exposition and explanation of that evidence should be given *viva voce* before the Jury by a doctor who can deal with the matter and satisfy them. The Sessions Judges insist on the medical witness being called in such cases.

When the statement of the medical witness before the committing Magistrate is apparently against the prosecution case, omission to call him before the Jury and the mere putting in of the former statement as part of the evidence is unpardonable carelessness on the part of the prosecution[1].

Lort Williams, J, observed in the case of *King Emperor* v. *Yunus Ali* that medical experts and others, such as Judges who have to form opinions and exercise their judgment should have regard primarily to the facts and should not draw upon their imagination; otherwise the administration of justice would depend upon their individual idiosyncrasies and become unstable and unworkable[2].

A medical officer gave evidence before the committing Magistrate and it was not certified that the evidence was given in the presence of the accused; the admission of such evidence by the Sessions Judge under section 288, Cr. P. C., was held to be improper.[3]

1. *Emp.* vs. *Debendra Narayan Chakravarty.* 33 C. W. N. 632 *Judgment of Rankin C. J., and Buckland J.*
2. *Emp.* vs. *Yunas Ali,* 32 C. W. N. 783.
3. *Bajrangi Lal* vs. *Q. Emp.* 4 C. W. N. 49.

The Court can not presume that the deposition taken was properly attested[1].

Chemical Examiner's report.—Under section 510 Cr. P. C. the report made by the Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Cr. P.C., may be used as evidence in any enquiry trial or other proceeding[2]. The report is considered to contain expert opinion.

Proving of facts bearing upon opinion of experts.—Facts not otherwise relevant, are relevant if they support or are inconsistent with the opinions of the experts, when such opinions are relevant.

The question is, whether A was poisoned by certain poison. The fact that the other persons, who were poisoned by that poison, exhibited certain symptoms of that poison, is relevant[3].

Opinion of experts expressed in any treatise—admissibility.—The opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or can not be found, or has become incapable of giving evidence, or can not be called as a witness without an amount of delay or expense which the Court

1. *Kachali Hari* vs. *Q. Emp.* 18 Cal. 129.
2. Section 510 Cr. P. C.; *Q. E.* vs. *Bishumbhur Dass* 15 W. R. 49.
3. Section 46 Evidence Act.

regards as unreasonable[1]. The Court can act .upon the opinion expressed in such a treatise[2].

Conflict between medical evidence and direct evidence.—Where there is direct evidence about the cause of death it is unwise to accept medical evidence which is in conflict with the direct evidence. I like to quote below an extract from the judgment of Norman J., by way of illustration. One Shamshere Ally was alleged to have been wounded by his brother. Shamshere Ally was examined by the Civil Surgeon, one Dr. Duncan and died after six or seven days. The Civil Surgeon's evidence was in conflict with direct evidence as to the cause of death. The direct evidence that Shamshere Ally met his death at the hands of his brother consisted of statements made by four or five witnesses, including his wife. The accused was tried for murder, the Sessions Judge observed, "This portion of the evidence for the prosecution must be put aside", because the Civil Surgeon has declared "that after the blow which caused the fracture, the man could not possibly have spoken." The matter came up before the High Court and Norman J., observed, "Mr. Duncan may have given his evidence like an intelligent man, but it is not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved. I may, observe, too that Dr. Duncan's thoery that Shamshere Ally could not have

1. Section 60 Evidence Act. *Grande Venkata* v. *Corporation of Calcutta* 22 C. W. N. 745 = 28 C. L. J. 32.
2. *Howe* v. *Howe*, 25 M. L. J. 594. F. B.

spoken after receiving the injury is apparently opposed to that in Taylor's Medical Jurisprudence, page 26. It is there said, "There is one remarkable circumstance connected with fractures (of the skull) accompanied by depression of bone which here requires to be mentioned, namely, that the person has been sensible so long as the foreign substance which produced the fractured depression remains lodged in the brain, and that insensibility and other fatal symptoms begin to manifest themselves only after its removal. Again a man may fall from a height and produce a severe compound fracture of the skull ; he may nevertheless be able to rise and walk some distance before he falls dead......" I do not see any sufficient reason why the evidence of the witnesses for the prosecution should have been dicredited"[1].

Report of the Chemical Examiner.—The original report is admissible in evidence in any inquiry, trial or other proceedings[2].

1. *Q.* v. *Ahmed Ally* 11 W. R. (Cr.) 25.
2. Section, 510.Cr. P. C.; *Q. E.* v. *Bishumbhur Dass*, 15 W.R. 49.

PART VI(A)

MEDICO-LEGAL JURISPRUDENCE.

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PART VI(A)

MEDICAL JURISPRUDENCE.

Introduction.

A criminal lawyer if he aims at any measure of success must have a passable acquaintance with the broad principles of medical jurisprudence to enable him to follow the medical evidence in criminal cases. The subject is no doubt very vast and may rightly be considered to be more than a life's study for achievment of anything like a specialization. No body would expect a lawyer to be a specialist in anything except law; but the profession of a lawyer requires him to know a good deal about many more things. If the case is one of special complication from the medico-legal point of view, the safest and the wisest course would be to consult a medical man whose knowledge of the subject is likely to be of real assistance. In this part an attempt only would be made to indicate the line of study of a case, and the method to be chosen for utilizing the available *data* for demolishing a theory or demonstrating another.

From the following pages a lawyer will get an idea of the Medical Science just necessary for conducting a criminal case either for the prosecution or for the defence.

CHAPTER I.

TOXICOLOGY.

A poison has been defined as "a substance, which when absorbed into the body or which by its local effect or action on the tissues, injures health or destroys life."

Poisons are derived from minerals, vegetables as well as from animal and bacterial sources. The bacterial poisons are known as "toxins" which are not regarded as "poisons" under conventional use of the term.

Poisons are often used for suicidal and homicidal purposes, for stupifying with an intention to rob, for procuring abortion, for infanticide and also for cattle poisoning. Accidental poisonings are sometimes met with when poisons are mistakenly swallowed as medicine. Corrosive poisons as strong acids are sometimes maliciously thrown on the face and body with the purpose of producing severe physical suffering and permanent disfigurement.

Poisons that are commonly selected for homicide are usually those which are colourless, odourless, and tasteless and which are easily procurable and would produce, on poisoning, some such set of symptoms as to fit in well with a common disease and thus not to cause any great suspicion. The arsenical compounds are much in use for homicide; *white arsenic*, the greatest homicidal poison, is the ideal. Other poisons that are commonly used are Aconite, Nuxvomica, Compounds of Mercury and Antimony, Opium (for murder of children) etc.

The most commonly used poison for suicide is Opium. Arsenical compounds, Oxalic acid, Potassium Cyanide etc are also used. A determined suicide may use any poison which is available at hand. Thus strong acids like Sulphuric or Nitric acid, which are known to cause the most horrible death, have sometimes been swallowed with sucidal intent.

Dhutra, Indian hemp as well as *Bhang* (Shiddhi) are used for producing stupification to facilitate theft or for robbing travellers of their belongings.

For inducing abortion, a twig of some irritant plants or sticks armed with irritant preparations are introduced into the vagina (the sexual passage) or the uterus (the womb). The abortionist sometimes overshoots his objective and produces a fatal hæmorrhage or equally fatal inflammation of the parts or both. The irritant may be detected inside the vagina or the uterus after death. The twigs of Plumbago Rosea, Oleandar, Zeylanica (*Lal Chitra*) are commonly used for causing abortion. Bruised markingnuts (*Bhela*) juice of Jaquirity (*Rati*), arsenious oxide, orpiment, red lead etc. are also in use.

Opium has earned for itself a great position among infanticidal poisons. Arsenic, tobacco, *Madar*, Phosphorus from the heads of lucifer matches, and acids are known to have been used for infanticide.

Diagnosis of poisoning in the living.—If a person in good health suddenly develops alarming symptoms soon after taking some food or drink or drug and the symptoms conform with those produced by certain known poison, a case of poisoning should be suspec-

ted. If several persons pertaking of the same food or drink develop similar symptoms the diagnosis of poisoning is made without reasonable doubt.

Certain diseases may produce symptoms which develop rather suddenly but they can be distinguished from poisoning by a careful consideration of the history of the development of symptoms. The diagnosis of poisoning should be clinched beyond all doubt by positive chemical tests of the suspected food or drink, the stomach-washings and the vomit and other excretions and secretions of the body and where a correlation could be established between the poison found and symptoms produced.

Post-Mortem Diagnosis of poisoning. All fatal cases with suspicious history and symptoms should be subjected to a thorough *post-mortem* examination. It should be conducted by a medical man with a special knowledge in Forensic Medicine.

This examination is carried on according to certain recognised methods as would appear below.

External Examination. It should include an examination of the garment and clothes and a special notice should be taken of any mark or stain that may be found, because these are as may furnish materials for chemical tests and diagnosis.

Next the examiner should survey the subject from head to foot. The condition of the face, the degree of dilatation or contraction of the pupils, the distribution and degree of Rigor Mortis present, the general condition of body surface, whether attended with any discolouration and if so whether patchy or general

in distribution, should be carefully noted. The orifices of the body e. g. mouth, anus, vagina etc. should be carefully examined for the presence of any poisonous agent as well as for any sign of injury, inflammation and corrosion.

Though the external examination of the subject very rarely reveals conclusive findings to lay our finger on a particular poison with the exclusion of others still it should not be lightly taken in as much as it often yields valuable informations as regards probability of a particular poison or a group of poisons and thereby directs our attention towards a particular line of investigation by other methods.

Now take for example a subject who presents for examination an intense rigidity of all muscles, clenched fists, arched and inverted feet, a pinched tense expression of the face and, if death was recent, a palpably warm body. These findings point towards *Strychnine poisoning* in a suspicious case but they are certainly not diagnostic in the absence of a positive chemical evidence in as much as these conditions also obtain in cases death from Tetanus or Hydrophobia. Similarly Arsenic poisoning may be quoted as another important example. The post-mortem findings by external examination only reveal an exhausted expression with a relaxed body shrivelled up due to loss of body-fluid as is occasioned in all cases of gastrointestinal irritation attended with severe vomiting and purging. Cholera, acute diarrhœa, and dysentery would also present these signs post-mortem. But the findings of the external examination would

direct the examiner to conduct the chemical tests not hap-hazardly but on a certain preformed idea.

Brown parchmentised marks at the side of the mouth, with signs of corrosion of lips, tongue and buccal mucous membrane suggest poisoing by strong acids or alkalies. Intense lividity of the face, neck and chest with froth in the mouth is seen in opium poisoning. Very dark post-mortem staining of Chlorate of Potash or bright red staining of Carbon Monoxide poisoning, though characteristic, may not be evident in dark skinned persons.

Convincing and characteristic changes in different viscera (organs) would be mentioned later in connection with individual poisonings. This section is devoted in describing the methods of post-mortem examination by which the poison may be recovered from the body of the deceased. As poisons are administered by mouth in large majority of cases of suicide as well as homicide, the contents of the stomach and intestines, would often afford, on analysis, diagnostic findings. For this purpose the stomach should be removed from the body between double ligatures *i.e.*, after the abdomen is opened a ligature should be tied at the junction of the gullet (food-pipe) and the stomach and then the gullet should be severed; similarly a ligature should be applied at the junction of the stomach and the intestine and another about an inch beyond it and then the intestine is cut between these ligatures. The stomach, now freed, should be opened up along the greater curvature in a clean dish and its content should be examined

carefully as regards its colour, odour, consistency etc. Any suspected solid particle should be picked up, examined and carefully preserved for chemical analysis. Opium and alcohol can be detected by characteristic odour while lumps of white arsenic *Datura* seeds etc. may be seen with the naked eye.

The mucous membrane of the stomach and intestine should next be examined. Irritant poisons e.g. strong acids and alkalies would undoubtedly produce severe inflammation of the mucous membrane, while others, which kill by remote action on the heart, lungs, brain and spinal cord may not leave any distinguishing mark on the gastro-intestinal mucosa. Hence, at once, it becomes evident how important it is, in order to give an opinion with any degree of confidence while conducting a post-mortem examination, to dissect and examine all the viscera of the body. This detailed examination might shed unexpected light on the case, by revealing co-existent diseases, and might materially influence the question of homicide, suicide or a normal death, depicted, by interested parties, as abnormal.

It would not be out of place to quote exmaples to illustrate the afore-said point of view. Supposing a man is reported to have died of opium poisoning. Post-mortem examination reveals an old cancerous condition of the stomach and also existence of opium in its contents and also all the findings of death from the effect of opium. Now the question is to determine whether this is a case of suicide, homibide or a natural death where opium is only found incidentally.

Firstly opium is used more often for suicidal intent as the extremely bitter taste makes it an inconvenient agent for homicidal purposes. Secondly, the existence of an old cancer of the stomach adds additional weight in favour of suicide. This is an incurable condition and attended with inhuman suffering which is likely to drive the poor subject to despair and to actuate him to commit suicide to escape all the torment and torture. It is not a natural death as the other findings are in favour of opium as a killing agent.

Now take for example another case where opium is discovered in the stomach as well as hæmorrhage in the brain. Here again the same old question of suicide, homicide or natural death presents itself for solution.

But knowing as we do that apoplexy and opium poisoning would both produce unconsciousness and a good number of phenomena in common, it might appear difficult at first sight to arrive at a conclusion. But it stands as an admitted fact that opium has not got any such effect on the blood-pressure or the vessel-wall as to cause its rupture. It goes to prove that opium is not directly the cause of apoplexy.

So the next point is to determine what is the cause of death Opium or Apoplexy? From what has been said above apoplexy appears to be the cause of death and opium is a secondary finding. If history supports that the subject was a habitual opium-taker it is just possible that he has been stricken down with a cerebral hæmorrhage soon after the usual

dope, or, what is less probable that somebody introduced opium into the stomach by a tube after death to give it a purposeful colour, homicidal or suicidal. The chance coincidence of suicidal attempt and apoplexy is the last thing to cross ones' mind. Here, it appears after due consideration of all possibilities that the individual has died a natural death.

The man conducting the post-mortem examination should send the following for chemical examination :—

(1) The stomach and its contents.
(2) The contents of the intestines.
(3) At least one kidney.
(4) Liver—at least one pound.
(5) Urine if found in the bladder.
(6) In cases of exhumed or decomposed bodies, hair, nales and a sample of bones should be sent.
(7) A sample of preservative used during transit of viscera.
(8) In cases of exhumed bodies a sample of the soil where the body was interred, should also be sent for examination because plea is sometimes taken, in case Arsenic is detected, that it was present in the soil.

Failure to detect poison by chemical examination in a case of undoubted poisoning may occur under the following circumstances :—

(1) When the poison has been fully evacuated or eliminated from the body, the victim having lived for a few days after the administration of the poison.

Very volatile or gaseous poisons may evaporate away. Very soluble poisons like acids, are quickly evacuated.

(2) When the poison undergoes chemical changes either by oxidation or putrefaction. Putrefaction affects some organic poisons but not minerals. Some organic poisons as strychnine or opium are not destroyed by putrefaction but opium may be completely oxidised by treatment adopted to combat poisoning during life.

(3) When the poison is insoluble in all ordinary laboratory solvents and cannot be extracted or when there are no suitable test for its identification.

(4) When proper materials are not supplied or only small quantities are supplied for analysis.

CHAPTER II.

DIFFERENT TYPES OF POISONING, SNAKE-BITE.

Sulphuric Acid Poisoning.

Poisoning by sulphuric acid is mostly suicidal or accidental, the acid being taken by mistake for medicine.

Minimum lethal dose.—When concentrated one drachm is sufficient to kill.

Fatal period.—Commonly 12 to 24 hours. If taken in concentrated form and in large quantities, death may occur within few hours due to shock. If the acid passes into the air passages, death may occur even earlier.

Symptoms.—As the acid is swallowed intense burning pain in the mouth is felt. There is excruciating pain over the stomach spreading over the whole abdomen. Vomiting sets in early. Vomited matter is thick, viscid and black from presence of altered blood and may contain shreds of torn mucous membrane. Abdomen is tender and distended. Respiration is hampered due to the swelling of the fauces. Voice is husky or lost. Exhaustion and collapse set in or death may occur from perforation of the stomach.

If dilute acid is swallowed, symptoms are less urgent. If the patient survives, he later dies of starvation due to narrowing of the gullet by scar tissue produced on healing of the corrosions.

Post—mortem.—Face shows utter exhaustion. The angles of the mouth, lips and chin show parchmentised marks. Inside the mouth, the mucous membrane is swollen and pulpy. It may be white, brown or may be charred black. The tongue may sometimes be reduced to pulpy mass. The abdominal cavity contains some dark fluid. The stomach appears black and corroded.—sometimes reduced to a structureless pulpy mass. The walls may show perforations. When handled, it easily breaks. With dilute acids the stomach may appear dark with engorged vessels. On opening, it shows some black slimy fluid. The mucous membrane is corroded, black, and torn in shreds in some places.

Vitriol throwing. Throwing of strong sulphuric acid on persons is sometimes resorted to with the

object of producing pain and disfigurement. Extensive burns are produced in the area with which the acid comes into contact. If the area involves a large surface of the body considerable shock even with fatal result may occur.

OXALIC ACID.

Most cases of oxalic acid poisoning are accidental owing to marked resemblance of its crystals with those of Epsom salt which is a common purgative.

Minimum lethal dose About ½ ounce.

Fetal period. Usually within an hour or two. May be as early as three or ten minutes.

Symptoms. Oxalic acid and its salts have got local irritant or corrosive action on the mucous membrane of mouth, gullet and stomach, producing burning pain and choking sensation while swallowing. Abdominal pain, vomiting and purging occur if the patient survives long enough.

The remote action on the heart is more important than the local effects. An increasing depressant action on the heart comes on in about 20 minutes after the swallowing of the acid, the temperature falls, numbness and cramps occur in the limbs. Respiration becomes slow and spasmodic, and coma sets in. Death occurs in an hour or two.

If the patient survives, loss of voice, complete or partial, tingling, numbness and twitching of the muscles and irritability of the stomach etc., may persist for some time. Strictures may develop later.

Post-mortem.—The mucosa of the mouth shows bleached white appearance. The stomach may appear black if the acid is taken in concentrated form. The wall of the stomach is either bleached or red and inflamed with a network of black streaks on the surface of the mucous membrane. The intestines may show inflammation. Lungs and brain have been found congested.

ARSENIC.

Arsenic is the commonest of all poisons used for criminal purposes. The tasteless and colourless properties of its compounds make it suitable for homicidal purpose. The "white arsenic (Arsenious Oxide), "orpiment", and "harital" (sulphide of arsenic) are the commonest of its compounds, and are readily procurable. Many household articles like flypaper, rat poison, wood preservative, paints on infants' toys, etc, contain arsenic and give rise to accidental poisoning.

Symptoms and signs of acute poisoning.—When taken with food in sufficient amounts, the symptoms appear in ½ to 1 hour. A burning pain on the stomach region followed by nausea and vomiting, at first, of the contents of the stomach and later of blood-stained mucoid fluid. Abdominal colicky pain accompanied by urgent purging, first of fœcal matter, later "rice water" like stools with flakes of mucus and often blood. Increasing exhaustion, cramps and sometimes convulsions develop. Gradually stupor and collapse set in. Death occurs in 24 to 36 hours. When very

large dose of a comparatively more soluble form of arsenic compound is taken in empty stomach, nervous symptoms develop early and death may take place before the gastro-intestinal symptoms set in. This is called the *narcotic type of poisoning*.

Fatal dose.—2 to 4 grains. Some persons who take "white arsenic" as a regular habit can take as much as 6 grains at a time without any symptom.

Chronic poisoning.—This is mostly accidental and occurs as an occupational disease in workers in arsenical factories owing to continued absorption in very minute doses for a long time. Sometimes after recovery from acute symptoms the chronic symptoms follow.

Symptoms and Signs of Chronic poisoning.—Irritation of the eyes with conjunctivitis, pharyngitis and laryngitis occur first. General malaise, loss of appetite, nausea, diarrhœa and colic follow. Tongue shows a white fur. General pigmentation of the body, thickening of the palms and soles, peripheral neuritis with paralysis and wasting of the muscles of forearms and legs set in gradually.

The symptoms of acute poisoning with arsenic resemble very closely those produced in cholera. The absence of an epidemic of cholera in the neighbourhood should arouse suspicion in a sporadic case with doubtful history. In arsenical poisoning vomiting preceeds purging. The vomit contains mucoid fluid often stained with blood, whereas the vomit in cholera is serous and often like "rice water" in character. Colic, griping or tenesmus so characteristic in arsenic

poisoning, are absent in cholera. In suspicious cases the vomit, urine and fœces should be submitted to chemical examination and bacteriological examinations for isolation of arsenic or vibrio choleræ.

Post-mortem.—External appearances are not characteristic except showing sunken eyes, pinched face etc. indicating rapid loss of fluid and exhaustion.

Internally signs of gastrointestinal inflammation are present. The mucous membrane of the stomach is swollen, red and congested. Petechæ are present and red streaks most marked on the summits of the rugæ are characteristic. Particles of the poison may be seen in the stomach or intestines. Liver, kidney and heart show cloudy swelling.

Chemical Test.—Two well known chemical tests for identification are the Reinsch's and the Marsh's tests.

Reinsch's Test.—A strip of copper foil and a little hydrochloric acid, both free from arsenic, are taken in a test tube. The suspected matter is then added and the tube heated. If arsenic is present a grey or black film forms on the copper foil after some time. The copper foil is now removed dried and placed in a sublimation tube. On heating, the arsenic is converted into oxide and volatilizes and is deposited on the cooler parts of the tube as octahedral crystals which are readily recognisable under the microscope.

Marsh's test.—Hydrogen is generated in a Wolf's bottle by action of sulphuric acid on zinc. The suspected material is now introduced into the Wolf's bottle and the issuing gas is ignited. A clean white

porcelain piece is depressed on the flame. Arsenic is deposited on it and produces a black spot shading to brown at the periphery. This arsenic deposit is distinguished from antimony which is also similarly deposited when similarly treated, by being soluble in calcium hypochlorite solution.

Mercury.

Mercuric chloride (corrosive sublimate) is the most common salt of mercury used as a poison. Accidental poisoning from thiocyanates of mercury (commonly used as children's toys—"Pharaoh's serpent") has occured in children. The sulphide commonly known as "China Sindur" has been known to give rise to chronic poisoning.

Signs and symptoms.—(Acute.)—Corrosive sublimate produces symptoms of irritant poisons like those of arsenic. There is a metallic taste in the mouth followed by pain in the throat and epigastric region. Vomiting, retching and purging occur. Vomit is mucoid and may contain blood. Stools are more dysenteric than diarrhœic. Kidnyes are damaged. Urine contains albumen, cast, and often blood. Urine may be suppressed. Prostration and collapse set in. Death occurs in 12 to 24 hours.

Fatal dose.—3 to 5 grains of mercuric chloride.

Chronic.—Chronic poisoning occurs in workers with metallic mercury as in miners of mercury, Thermometers, Barometers, or looking-glass makers. It also occurs after prolonged therapeutic use or after abatement of symptoms in acute poisoning.

Symptoms.—Symptoms are salivation, metallic taste in the mouth, soreness of the gums and tongue. Foul smell in the breath, lassitude and anaemia, tremors of hands and fingers, gastrointestinal upset, albuminuria, skin rashes, etc.

Post-mortem appearances in acute cases.—Corrosive sublimate causes coagulation of porteins in tissues and so hardens them.

The mucous membrane of mouth, throat and œsophagus are hard and shrivelled. Stomach wall shows inflammation. The mucous membrane is swollen and hardened, grey or black in colour and fissured in places. Large intestines show inflammation and often ulceration.

Kidneys show dark congested condition of the pyramids and other changes characteristic of acute nephrosis.

Detection.—The Reinsch's process, as in cases of arsenic can be employed for isolation of mercury. Globules of metallic mercury will be seen instead of the crystals, as in the case of arsenic, under the microscope.

Copper.

Poisoning from Copper Sulphate (Tutia) is mostly accidental. It is rarely used for homicidal or suicidal purposes. About an ounce is required to produce fatal result. Symptoms are those of irritant poisoning with vomiting and purging. Vomited matters may be stained blue.

Lead.

Acute lead poisoning is uncommon. Symptoms are colicky pain in the abdomen, vomiting and constipation instead of diarrhœa. Chronic poisoning is more common and usually seen amongst painters, type-setters in a press, workers in lead pipe factories, etc.

Symptoms :—Lassitude, dyspepsia, constipation and intestinal colic. A blue line on the gums appear. Increasing anæmia with punctate basophilia in the red blood cells. Severe headache and pain in joints, neuritis with paralysis specially of the extensor muscles of the fore-arm with the characteristic exception of the supinator longus. High blood pressure with giddiness etc occur. Sometimes optic neuritis occurs.

Opium.

Opium is the most common poison used for suicidal purposes. Lyons estimates that about 40 p c. of the deaths reported to the Chemical Examiner are due to opium.

Symptoms and signs :—Symptoms begin to appear in about half an hour after taking opium. After a short period of stimulation with a feeling of well being and satisfaction it causes depression of the nerve centers. The patient gradually becomes drowsy and falls into deep sleep. Efforts to arouse him only succeed in producing slight response. Breath may smell of opium. The breathing is deep and slow. Pupils show contraction. The deep sleep passes into coma. The patient does not respond to any stimula-

tion. Respiration becomes still more slow and later stertorous. Face is heavy. Lips are cyanosed. Pupils are contracted to pin-point. Surface of the body is cold and covered with sweat. Pulse weak and small. Death occurs from respiratory failure in from 10 to 12 hours.

Post-mortem. Changes are not very characteristic. Lividity of the face, neck and chest is often seen. Stomach contents may smell of opium. Blood is fluid and very dark. Lungs are congested and œdematous.

Fatal dose :—Usually 6 to 8 grains of crude opium and 1½ grains of morphine are fatal to an adult. Persons addicted to taking opium regularly can take very large quantities without ill effect. Children bear this very badly. So also certain persons with idiosyncrasy, in whom very small doses cause alarming symptoms.

Chemical tests :—Opium is detected by the presence of morphine and meconic acid. A orange colour changing to yellow is produced when strong nitric acid is added to morphine. Potassium bichromate and concentrated sulphuric acid produce a green colour.

Meconic acid solution gives a bright red colour with Ferric chloride. The colour is not destroyed by dilute hydrochloric acid or mercuric chloride.

Alcohol.

Alcohol is a cerebral depressant. At first it affects the higher functions of the brain, that is to say the inhibiting influences of the brain by which one gets

self-restraint over his lower instincts, such as emotions. These functions are depressed and the subconscious emotional tone becomes apparent. At this stage a change in behaviour in the person is observed. The change depends on the natural temperament of the individual. Thus under the influence of alcohol, "the jovial becomes hilarious, the melancholic lacrimose and the choleric pugnacious." In the next stage more obvious functional disturbances are observed. The finer acts of co-ordination by which skilful and trained movements are performed become disturbed both as regards their speed and accuracy The speech becomes heavy and slurring. Gait is unsteady. The face is flushed and eyes are red and congested. Pupils dilated. Deep sleep supervenes. With large doses coma sets in with loss of all reflexes and subnormal temperature. Death may occur from respiratory failure.

Tests of Intoxication.—It is necessary sometimes to decide whether a person in a responsible position is sufficiently "drunk" to have lost control over his full faculty and judgment and has thereby become a source of danger or nuisance to the public. It does not suffice only to determine whether the person has taken alcohol or not; but a determination of the degree of impairment of his judgment and skill is necessary. Late stages of intoxication or obvious drunkeness does not require exact tests for its determination.

The general appearance and attitude of the person whose sobreity is in question often serve as good

guide to a correct diagnosis Incoherent speech, disorientation of time and place should be observed.

Dilated pupil, rapid pulse, etc. may be due to causes other than alcohol.

Certain time-honoured classical tests for "drunkenness" depend on the inability of an intoxicated person to pronounce certain difficult words like "British Constitution" or "Mixed Biscuits," etc. or his inability to perform certain acts requiring great attention and co-ordination such as walking along a straight line.

A chemical test has also been suggested. It depends upon the fact that during the stage of acute intoxication alcohol is excreted in the urine and its concentration in urine is proportional to its concentration in blood. So that presence of alcohol in urine in concentrations of 0·1 or 0·15 percent or over is believed to be associated with "drunkenness". But unfortunately the degree of intoxication or 'drunkenness does not depend upon the actual concentration of alcohol in blood. The response in different individuals varies greatly to equal doses of alcohol.

Post-mortem changes in fatal cases are not characteristic. Some congestion in stomach and brain may be found. The lungs may be œdematous.

Fatal dose. It has been estimated that in terms of absolute alcohol 2½ to 5 ounces may be fatal for an adult.

Datura.

The toxic effects of *datura* are due to the presence in it of the alkaloids daturin and Atropine.

The *datura* seeds are commonly used for producing a sort of somnolence, to facilitate theft or robbery.

Symptoms. The action is in two stages ; first is one of stimulation and later depression of the nervous system.

The patient experiences confusion of ideas, becomes restless and later violently delirious. Hallucinations both visual and auditory are common. There is flushing of the face, throat becomes dry and great thirst is felt. Pupils are widely dilated, vision becomes impaired and power of accommodation is lost. Skin is dry. Temperature rises. The delirium passes into somnolence which in severe cases may pass on to coma. Death may occur from respiratory failure.

Fatal dose. Lyons estimates this to be about 10 to 15 grains of the seeds.

Tests. Chemical tests are not satisfactory. The physiological test is applied for its detection and depends upon the fact that when dropped into the eye in solution, atropine causes dilatation of the pupil. Cat is used as test animal.

Cocaine.

Many persons are in the habit of taking small amount of cocaine as a mild intoxicant. In small doses it produces a sense of happiness, wellbeing and exhilaration. This is followed by depression. Taken in poisonous doses, it produces a first stage of stimulation when the individual becomes restless or boisterous. Face becomes flushed. Pupils are dilated. Nausea and vomiting may occur. Palpitation and

irregular action of heart follow. Death occurs from asphyxia often preceeded by convulsions.

In chronic poisoning of a cocaine addict, the victim is gradually demoralised and rendered unfit for work. He suffers from loss of appetite, insomnia, hallucinations, etc. A feeling of worms moving under the skin specially of the palms, develop. Sexual excitement may be increased but sexual power is diminished.

Indian Hemp.

It is also called Cannabis Indica. Various forms are '*Ganja*,' '*Bhang*', '*Charas*,' '*Majum*'. This is very widely used as an intoxicant. Prolonged indulgence to '*Ganja*' is said to cause insanity. Persons intoxicated with '*Ganja*' are believed to become violent even to the extent of committing homicide. A person may 'run amok' under its influence and commit a series of murders. A motive for such crime, though often traceable, is not always apparent.

Symptoms. It first produces a stage of excitement when the person gets in extremely jovial mood or in a state of sexual excitement. Later it depresses. There may be tingling and numbness in parts or over the whole body.

Nux-Vomica.

The nux-vomica seeds contain strychnine, which is a most powerful poison and brucine, a poison of milder degree. Poisoing by the pure alkaloid strychnine is rare and mostly accidental.

Symptoms. Strychnine in small doses increases the acuteness of the senses and mental alertness. In

poisonous doses it causes stimulation of the spinal cord as a result of which slight external stimulus is sufficient to throw the body into violent convulsions or tetanic spasm.

It has an intense bitter taste. With strychnine the symptoms come on rapidly (in 5 to 20 minutes) but with nux-vomica, a little later. The irritability of the muscles are shown by twitching and cramps in small groups of muscles, followed later by intense painful tetanic spasm affecting the whole body. The appearance of a person in such spasm is very characteristic. The whole body becomes rigid, back is arched, hands clenched, feet extended and inverted, jaw tightly set. Contraction of facial muscles produces a grin (Risus Sardonicus). Face becomes cyanosed, eyes become prominent and pupils dilated. The spasm lasts for about a minute. The muscles then relax. Such spasm recur at variable intervals. Death occurs either during a period of spasm from asphyxia owing to fixation of the muscles of respiration or in between the spasm from exhaustion and collapse. Mind is clear and consciousness is retained till the end.

This condition has to be carefully differentiated from tetanus, which it strongly resembles. In tetanus there is a history of a wound. The lock-jaw appears earlier than other symptoms. Most important difference is that, in tetanus the muscles are continuously in a state of tonic spasm whereas in strychnine poisoning, they relax in between the spasms

Post-mortem :—Rigor mortis sets in early. All

muscles are contracted and stand out in bold relief. Signs of death from asphyxia may be present.

Fatal dose :—Strychnine ½ to 2 grains.

Nux-Vomica—Lyons mentions a case where 30 grains of powdered seed equal to about one full size seed caused death of a girl of ten years.

Oleander.

Two varieties are seen. (1) White Oleander commonly known as "Swet Karavi" in Bengali (Nerium Odorum) and (2). Yellow Oleander 'Kalki-phul' (Cerbera Thevetia).

Symptoms :—(1). White—vomiting, restlessness, muscular twitching later convulsion. Pulse weak and slow. (2). Yellow—a sense of tingling in the mouth followed by vomiting and purging. Pulse slow and weak. Pupils dilated.

Aconite.

There are two varieties—Aconite Ferox and Aconite Napellus. All parts of the plants contain the active principle of Aconite, which is a deadly poison.

Symptoms :—A tingling sensation is felt in the tongue and mouth followed by numbness. Vomiting and diarrhœa may occur. There is great muscular weakness. Respiration is slow. Heart is weak and irregular. Death may be due to action on the heart producing ventricular fibrillation or by paralysis of respiration. Fatal period from 3 to 4 hours.

Fatal Dose :—One drachm of the root. Pure Aconitine—$\frac{1}{20}$ to $\frac{1}{16}$ grain.

Hydrocyanic Acid (Prussic Acid) and Cyanides :— Poisoning by Potassium Cyanide for suicidal purposes is common.

Symptoms :—There is a feeling of giddiness and confusion of ideas followed by insensibility and muscular paralysis. Face is pale, eyes prominent and salivation is often present. Death occurs from asphyxia often preceeded by automatic passage of urine and fœces. In very large doses immediate death occurs from syncope usually preceeded by a forcible expiration which in some cases may give rise to a shriek.

It should be remembered that even when a large dose is taken, a person for a short time before insensibility and paralysis sets in, may perform some acts or move a few steps. So that in a case of suicide, a person may be found at a little distance away from the cup or bottle from which he has taken the poison.

Fatal Dose :—30 minims of the official acid and 0·9 grains of the anhydrous acid has proved fatal. 2½ grains of pure potassium cyanide is the minimum lethal dose. Average fatal period is 2 to 10 minutes.

Post-Mortem :—There is no characteristic appearance. The changes common in asphyxial death may be present. Odour of hydrocyanic acid may be obtained in the contents of the stomach.

Snake-bite.

Symptoms and cause of death in cases of snake bite vary according to the type of the snake. There are broadly two species of snakes :—

(1) the Colubridae and (2) the Viperidae. To the first belongs the common cobra. In snake-bite the local effect is one of immediate burning pain. The part later swells and becomes inflamed. In cobra-bite the local effect is less than in viper-bite, where considerable local inflammation and infiltration is common. In cobra-bite, the poison on being absorbed into the system, exerts a marked effect on the nervous system, causing paralysis. The appearance of these paralytic symptoms, seldom occurs earlier than 15 minutes after the bite. The victim feels loss of power in his legs, and experiences a feeling of dizziness. The paralysis extends to other muscles of the body. Tongue and pharynx being paralysed, speech is lost. Ultimately death occurs from paralysis of respiration.

In viper-bite, the action of the poison is mainly on blood. In rapidly fatal cases, extensive intravascular thrombosis occurs, specially in the pulmonary arteries. If however death is not rapid, the blood looses its power of coagulation. There is extensive damage to the endothelial lining of capillaries and the body—cavities leading to hæmorrhages and exudation.

Post-mortem :—The site of bite shows much swelling and inflammation specially in viperine cases. The blood is unusually fluid and vessel wall shows staining owing to hæmolysis. In viperine cases, hæmorrages under the pleura, pericardium, etc. are common.

CHAPTER III.

BURNS AND SCALDS.

'Burns' are produced by application of flame or hot solids on the body. When the injury is produced by liquids, it is spoken of as 'Scald'.

Three degrees of 'burns' are recognised.

(I). Mere redness of the surface is spoken of as 'Burns of the first degree'.

(II). Production of vesicles constitute, 'burns of the second degree'.

(III). Destruction or death of the tissues of the injured area constitute 'burns of the third degree'.

Anti-mortem and post-mortem burns.—The difference between anti-mortem and post-mortem burns depend on the presence of signs of inflammation and true vesicles. By true vesicles are meant those that contain fluid rach in albumen, and are present only in anti-mortem burns. False vesicles contain gas or fluid poor in albumen and when present indicate burns inflicted after death. It is possible however for anti-mortem burns to have no vesicles at all. The presence of a red line around the injured area indicates burns during life or within 10 minutes after death. Its absence however, does not indicate post-mortem burns.

Smoke is sometimes inhaled into the air passages, so that finding of soot inside the air passages in 'post-mortem examination of a badly burnt body, is an important evidence of burns inflicted during life.

CHAPTER IV.

SIGNS AND SYMPTOMS OF PREGNANCY.

Amenorrhœa. Amenorrhœa or cessation of menstruation occurs after conception. In rare occasions, however, menstruation may continue for one or two periods. Amenorrhœa may occur due to causes other than pregnancy, so that it is not a sure sign of pregnancy.

Morning sickness.—This appears at about the 6th or 8th week after conception and lasts upto about the 16th week. This is not very constant and along with other symptoms such as constipation, frequency of micturition, perversity of appetite etc., may be present in various conditions other than pregnancy.

Breasts.—A sense of fullness of the breasts appears in about 6 weeks and this may gradually increase into a pricking sensation or later actual pain and heaviness. The breasts feel tense, nipple becomes prominent. The areola (the dark area of skin around the nipple) becomes darker in colour and shows small tubercles called Montgomery's tubercles. Later the breasts enlarge, feel hot and shotty. Prominent veins are seen on the surface. After the 16th week, a milky secretion can be squeezed out of the breasts.

These breast changes are important in cases of first pregnancy. In multipara they are less obvious. Moreover these changes may be present in cases other than pregnancy.

Abdomen—very little change is observed in the abdomen in the early months except for some pigmentation in the middle line and around the umbelicous.

After the third month the uterus begins to rise from the pelvis. It enlarges at the rate of about 2 inches a month.

It reaches the umbilicus at about the 24th week and the ensiform cartilage at about the 36th week. The level of the upper edge of the uterus descends a little during the last few weeks due to the descent of the fœtus into the pelvis.

The pregnant uterus is distinguished from other swellings in the abdomen by its alternate contraction and relaxation which can be felt by the examiner's hand. This is very characteristic.

The presence of a solid body can be felt inside the uterus by causing it to move in the fluid inside the uterus—(external ballottement)—after the 4th month. In the latter months, the fœtal parts can be easily palpated.

The fœtal heart sounds :—The detection of the fœtal heart sounds, which can be heard after the 24th week, is most important for the diagnosis of pregnancy. The rate of sounds heard over the abdomen should be compared with the maternal pulse rate. The fœtal heart sounds are about 140 per minute.

Quickening—The mother usually feels the movements of the fœtus in the uterus from about the 18th week. This is known as 'quickening.' This being a subjective sensation can not always be relied on.

The movements of the fœtal limbs, however, can be felt by an examiner after the 24th week, as light taps on the hand while palpating the abdomen.

Internal examination—The vagina shows increased vascularity and is moist from a very early period. The cervix begins to soften early as well it shows purple discolouration. Softening of the cervix increases till it becomes so soft as to be almost unpalpable at about 18th week.

In the early months of pregnancy owing to extreme softness of the lower part of the body of the uterus, two fingers of one hand placed in the vagina and two fingers of the other hand placed over the abdomen, with the lower part of the body of the uterus between them, can be made almost to meet each other—this is Hegar's sign. These signs however are not conclusive of pregnancy.

The sure signs of pregnancy for practical purposes are--

(1) Presence of the fœtal heart sounds.

(2) Detection of fœtal movements and parts.

(3) Demonstration of the fœtal skeleton in X'-ray photograph.

In the early months the Ascheim-Zondek test affords a fairly sure test of pregnancy, but it involves a difficult and complex biological technique.

Signs of recent delivery—A general sense of indisposition may be present, but this is very variable. This may be very little or entirely absent, especially in women of the working class, or it may be very great especially in primipara or after difficult labour. The abdomen is lax, the uterus can be felt reaching to about 5 inches above the pubis on the first day

after delivery. There-after it gradually diminishes in size and disappears in about a fortnight.

Breasts show signs of fullness and engorgement. Colostrum may be squeezed out or milk after two or three days.

The genital organs and perineum show signs of laceration or some swelling. The cervix shows laceration and remain open for a few days, admitting at least two fingers.

Lochial discharge—(a discharge from the uterus) This is very characteristic of recent delivery. It is at first red containing blood and mucus. Later on it become paler and finally almost white containing only mucus and white cells. It lasts for about 10 days to a fortnight.

CHAPTER V.

IMPOTENCY AND STERILITY.

Impotency is the inability to perform sexual intercourse whereas sterility is failure to procreate. A person may be impotent but not necessarily sterile. So also sterility may be present without impotency.

Causes of Impotency and Sterility :—

In males—

(1) **Age.** Extreme youth or extreme old age. Age of attaining puberty in males in India is variable. It is believed that potency develops earlier than fertility and in old age also, the spermatozoa disappear from the semen earlier.

In Indian law a child under 7 years is accepted as unable to commit any sexual offence so that this question of potency does not arise for a child under 7 years.

(2) Actual defects in the development of the external organs of generations. These must be of such a nature as to render the deposition of semen into the vagina impossible—such as complete Hypospadias or Epispadias.

(3) Disease—Local or general—Local diseases like elephantiasis of the penis and scrotum or large hydrocele etc., may cause impotency by mechanical obstruction and disadvantage.

Sterility may occur in stricture of the Urethra, Epidydymitis, Orchitis etc.

General weakness after constitutional diseases cause temporary impotence. Diseases or injury to the brain or spinal cord causing paralysis of the legs (Paraplegia) or of one side of the body (hemiplegia) may cause impotence.

Over indulgence in alcohol, opium ganja etc., may cause sterility.

In females—

(1) Age—Females in India attain puberty and begin to menstruate commonly at the age of 12 or 13 years. Below the age of ten they may be considered sterile except on rare occasions.

Menstruation ceases usually between 40 and 50 years. After menopause the woman is sterile,

(2) Abnormalities—Congenital narrowing of the vagina, infantile uterus or other develop-

mental defects may cause impotency or sterility in females.

(3) Diseases of the genital organs may cause sterility such as in chronic endometritis, fibroids, chronic salpingitis etc.

Complete perineal tear, recto-vaginal fistula etc. by rendering the retainment of semen at the vault of the vagina impossible, may cause sterility.

(4) Psychic causes such as Hysteria, excessive excitement, nervousness etc. may cause impotence.

CHAPTER VI.

INSANITY.

An exact definition of insanity cannot be given. Insanity is the inability of a person, owing to some abnormal condition of his mind, to adjust himself, in his behaviour, with his environments. An insane person has been described as a 'square peg fitting into a round hole'. He cannot fit himself into the society. It is only when this maladjustment becomes of such a degree as to render the individual dangerous to himself or to the society, that the law puts restraint on the individual for the protection of the individual himself and the society. Moreover, the law does not hold an insane person responsible for his actions, because he is unable to realise the nature of his actions.

The law requires decision as to whether a person is of sufficient soundness of mind or not, to realise

the nature of his actions, in cases (*i*) where insanity is put forward as a plea for exemption from punishment for a crime (*ii*) where the validity of a will or contract is questioned (*iii*) where a person is alleged to be unable to manage his own properties on the ground of unsoundness of mind. (*iv*) where a person is to be certified under the 'Lunacy Act'.

The diagnosis of insanity, though easy in obvious cases, may present one of the most difficult problems. As has been mentioned, the exact definition of insanity cannot be given, because an exact standard of sanity cannot be laid down. Normal persons very considerably in their dispositions and even the same person is subject to extreme changes in mood. A person may, at one time be in a mood of extreme exaltation or excitement or in one of extreme depression. It is very difficult to determine where the physological limit of exaltation or of depression ends and mania or melancholia begins.

On the other hand an insane person may have his 'lucid interval' during which he is quite sane.

Hence the diagnosis of insanity in some cases necessitates a good deal of care and consideration. In suspected cases it may be necessary to keep the person under direct observation of the medical officer for some days. This is more specially necessary in cases of 'feigned insanity'.

A careful consideration of the history as to family or heriditory predisposition to insanity or neurosis, previous addiction to intoxicants, sudden changes in the familial or private affairs of the individual which

might cause intense mental disturbance,—as for instance, a grief or disappointment, is of considerable importance.

Enquires should be made as to any important changes in behaviour of the individual towards his relatives and friends.

In examining an insane, a kind and sympathetic attitude is of great help. The individual should be drawn into friendly conversation and should be encouraged to talk. Any lack of coherence or sequence in his conversation should be watched. Disorientation of time and space or lack of memory of time or events, recent and remote, should be carefully elicited. When allowed to talk an insane person seldom refrains from exposing his delusions or illusions; melancholics, however, are very difficult to be drawn into conversation.

Observation in suspected cases.—A person suspected of being insane can only be detained in a mental hospital or mental observation ward, for not more than 10 days, by the order of a Magistrate. If 10 days be not sufficient, for a definite opinion, the Magistrate can extend the detention for period of 10 days, the total detention not exceeding 30 days.

The medical officer should inspect the person daily. Inspecting the person without his knowledge or when the person feels himself unwatched is of great value, specially in cases of feigned insanity.

In an observation ward, the individual's personal habits, appetite, hours of sleep, behaviour towards attendants etc., should be carefully noted daily.

Feigned insanity :—Insanity, being such as to make a person liable to detention in a mental hospital and to impose upon him a social stigma, is seldom feigned unless there is a strong reason behind, and this is mostly to get exemption or reduction of punishment for a crime. A motive of such nature should always be looked for in cases of feigned insanity.

Obvious characteristics of insanes, such as, characteristic facial expression, furred tongue, dry skin, or some physical maldevelopments or defects are absent. But these may be absent in slight cases of insanity.

For diagnosis, a close observation for a period of not less than 10 days is most important.

In his anxiety to prove himself insane, an imposter, when observed frequently overacts. The symptoms may not conform with any known type of insanity. Delusions or illusions which are often fixed in true lunatics may be constantly changing in a malingerer.

A true lunatic in most cases has very little concern for his personal comforts, is filthy in his habits, and sleeps very little, whereas an imposter is careful about his comforts specially when he feels himself unwatched and sleeps soundly, being exhausted in his efforts to show his insanity.

CHAPTER VII.

DEATH.

Death is absence of life and is characterised by the cessation of animal functions of the body which are

maintained by the harmonious working of the cogs and wheels of the living machinary under the guidance of the brain.

The heart is a pump which during the whole span of life is active in sending blood to all the organs and the tissues with a view to supply nourishment, derived from the product of digestion, as well as oxygen and remove effete products as produced by the wear and tear of daily life. The lungs are the bellows, contained inside the chest with the heart, which inhale the air and incorporate the oxygen therefrom into the hæmoglobin of the blood.

The moving heart and the lungs afford suitable and convenient study for detection if life is extinct.

It is customery, in classifying the modes of death, whether natural or unnatural, to lay the blame at the door of one of the three most important organs namely the heart, the lungs or the brain whatever may be the remote cause of death. Hence death may be due to

1. Syncope or failure of circulation (Circulatory death)

2. Asphyxia or Failure of respiration (Respiratory death).

3. Coma or Failure of brain (Cerebral death). But let it not be confused that the aforesaid organs are all inter-dependant in their respective functions and that the disorder of one more or less affects the other. The mode of death is said to be syncopal, asphyxial or cerebral according as the process of

death starts in the circulatory system, respiratory system or the central nervous system i.e. the brain and the spinal cord. The syncopal death, therefore, does not mean that the death is due to the defection of the heart without the involvement of the brain or the lungs,

Now take for example a man who is dying of a heart disease. The heart is progressively failing in its functions i.e. failing to maintain adequate supply of blood to the organs. Along with all the other organs the brain suffers in its nourishment and oxygenation as well. Now there are specialised areas of the brain which are responsible for the function of the heart and the lungs. These areas are called centres. The one influencing the heart's function is called cardiac centre while the other regulating the respiration is called respiratory centre. These vital centres progressively suffer in consequence of the defecient blood supply on account of the circulatory failure and thus, in turn, deleteriously affect the function of the heart and the lungs. So it is at once apparent that a vicious cycle is established. The weakening heart is crippling the centres by causing anæmia of the brain while the crippled centres fail to govern the function of the heart and lungs.

But even though the cardiac centre in the brain is an accomplice in extinguishing life still the death should be called circulatory or syncopal, because the process of death originally started in the circulatory system.

1: **Syncope.** A syncopal death is always due to a circulatory disturbance of such a magnitude as to make life impossible. This may be caused by a quantitative or a qualitative change in the blood or by an interference of the propelling power of the heart.

(*a*) **Quantitative change.** Depletion of blood by hæmorrhage.

(*b*) **Qualitative change.** Defeciency in quality as in poisonings, e.g., Hydrocyanic acid.

(*c*) **Interference with the propelling power.** The heart muscle may be damaged by disease or poison or may become overwhelmned in a condition called shock.

The patient dying of syncope appears pale and his body and extremities feel cold to the touch. He complains of dimness of vision and buzzing in the ears. His lips are blue ; his respiration is hurried and gasping ; he may be delirious, insensible or be convulsed and his pulse is always weak though it may be regular or irregular, slow or fast depending upon the condition he is dying of.

Post-mortem.—If death is due to loss of blood as in hæmorrhage the heart is empty and contracted. But when death is due to the failure of the heart's muscle the organ looks flabby and relaxed and its cavities are usually and equally full on both sides.

2. **Asphyxia.** Asphyxial death is due to interference with the process of oxygenation. It may result from

(*a*) Lack of oxygen and presence of inert gas in the respired air.

(*b*) Mechanical obstruction either inside or out-side the air passage preventing air entry into the lungs.

(*c*) Failure of respiratory movements either from paralysis, spasm or exhaustion of the muscles of respiration.

(*d*) Depression or paralysis of the respiratory centre in the brain.

(*e*) Non-expansion of the lungs due to accumulation of fluid or gas in the pleural cavity or due to compression or division of Vagus nerve controlling the motor function of the lungs.

The symptoms are intense lividity of the face, gasping, laboured breathing, the individual struggling for breath with staring or even protruding eyes. Giddiness is soon followed by unconsciousness or convulsions. In asphyxial death difficulty in breathing precedes unconsciousness.

Post-mortem Examination.—The external appearence is characterised by an intense cyanosis. The lips, ears and fingers are blue, the veins are full and prominent and the eyes are bulging.

Internally the venous system, the right side of the heart and the lungs are found congested with very dark blood (Note that oxygenated blood looks bright red while de-oxygenated blood is dark in appearance). Lungs may reveal small spots of hæmorrhage either on the surface or in the substance of the lungs. Ecchymoses under the pleura, (a thin

membrane which covers the surface of the lungs) known as Tardieu's spots are common particularly in suffocation. There may be superficial emphysema or formation of bullæ or vesicles on the lungs.

3. **Coma.**—Death from coma may be caused by one of the following ways.

(*a*) Anæmia of brain as by occlusion of a brain artery.

(*b*) Narcotic poisons depressing the functions of the organ.

(*c*) Pressure on the brain as by a depressed bone, a tumor, blood or inflammatory exudate.

The symptoms of death from cerebral cause are stupor deepening into complete insensibility, slow irregular and stertorous breathing and a slow pulse. Unconsciousness precedes the respiratory difficulty.

Post-mortem examination.—There is no characterestic findings. The nature of the cause of coma may be evident from the presence of signs of injury on the skull or hæmorrhage, tumor or inflammation in the brain.

Death from shock.—Results from reflex inhibition or check of vital functions. It may be caused by a severe injury or an extensive burn but it also may result from slight injuries on certain parts as the abdomen, testicle, larynx, head etc.

CHAPTER VIII.

STRANGULATION AND THROTTLING.

Strangulation means constriction of the throat, the force causing constriction is anything but the body-weight. An individual may be strangled by fingers (Throttling) foot, knee, cord, cloth etc. The death from strangulation is of the asphyxial nature and reveals post-mortem findings of asphyxia. It is usually homicidal, rarely suicidal and occasionally accidental.

Post-mortem findings—The mark or the marks in the neck—If a cord or a ligature has been used. There would be a transverse mark situated low down completely encircling the neck. The mark may be oblique and high up in the neck as in hanging if the body has been dragged for some distance by the strangulating cord. But in this case there would be found abrasions and other evidence on the body and clothing as caused by the drag. Hæmorrhage under the skin (ecchymosis) of the neck, abrasions and injury to the soft parts are more common in strangulation but yellow perchmentisation of the neck-skin, as found in hanging, is rare.

When strangulation has been caused by manual pressure. Marks of finger and thumb are almost invariably present. Sometimes the nature of violence is detected by dissection. When strangulation is caused by foot or knee there is much more injury to the soft parts of the neck.

When a hard substance has been used (e. g. a rod, stick or a brick or a stone). A central bruise on the

front of the neck is produced with severe injury to the tissue at the site.

Signs of asphyxia and other appearances. (1) Emphysematous patches on the lung surface are invariable.

(2) Hæmorrhage in the substance of the lungs is common but Tardieu's spots are rare.

(3) Pericardial effusion of bloody serum is very common.

(4) Saliva mark as seen in hanging are not likely to be present.

(5) Tongue usually not protruded.

(6) Eyes may remain closed.

CHAPTER IX.

SUFFOCATION.

It includes all cases of asphyxia except drowning caused by violent means other than mechanical pressure on the wind pipe.

It may be caused by

(1) obstruction of mouth and nostrils.
(2) pressure on chest
(3) blocking of glottis and air tubes.

The obstruction of mouth and nostrils by pressure is a common method of infanticide. Accidentally a child may be smothered by the mother overlaying it. Suicide by this method is extremely rare.

Death due to suffocation as caused by pressure on the chest is generally accidental, as when an indivi-

dual is buried under a fallen building or when he is squeezed into suffocation in a crowd.

Closure of the glottis by accidental impaction of food material or foreign body in the throat, as false teeth, or due to the spasm of a disease is some times the cause of death. Suicide and adult homicide is rare. Infanticide by stuffing mud in the throat has been recorded.

Post-mortem findings are that of asphyxia. The substance as mud, which caused obstruction to the passage, may be found. Tardieu's spots are usually present. Indication of injury or violence may be found on the chest if the individual is done to death due to abnormal thoracic pressure.

CHAPTER X.

DROWNING.

In drowning the mouth and the nostrils must be so submerged under water or any other fluid that the air-entry into the air passages and the lungs is completely stopped. The air passages and the lungs suck in the submersion fluid when the drowning man attempts at respiration.

Death by drowning is commonly accidental and suicidal while homicidal cases are much too rare.

Mode of death. In 25% death is purely asphyxial while 62·5% it is due to a combination of asphyxia and syncope or cerebral congestion. In remaining

12·5% death is caused by appoplexy or cerebral congestion or syncope or shock (Lyons). Death is instantaneous if it is due to shock, rapid if from asphyxia and less rapid if asphyxia and syncope are both contributory factors.

Asphyxia starts within two minutes after immersion and death takes place in five minutes. Recovery is rarely possible after 5 minutes drowning.

Post-mortem findings. Fine froth at the mouth and nostrils is usually present. If the temperature of water has been sufficiently low or if immersion has been of some duration "Cutis Anserina" or goose-skin appearance of the surface of the body may be revealed. Its presence indicated immersion during life or shortly after death but its absence means nothing. Bleached corrugated and sodden appearance of the skin, palm and soles may be present and may furnish some idea as to the length of time the body has been under water. Presence of mud, sand or aquatic plants tightly grasped in clenched fists is a strongly positive and affirmative evidence of drowning during life.

Internally the trachea and bronchi may show the presence of mud or sand and other materials that may be found floating in the immersion fluid. Aquatic flora e.g. algae diatoms etc are frequently detected in aspirated water of a tank. The lungs are sodden and oedematous and do not collapse on opening the chest. They pit on pressure. Bloody froth may be present in the bronchi. The pleural cavities may be filled with watery transudate. Presence of water

in the stomach with or without mud, sand and other aquatic materials is an important finding. Lyons states that it is highly improbable that water can enter the stomach after death. Hence the presence of water in the stomach is a strong evidence of drowning during life.

CHAPTER XI.

ASPHYXIAL DEATHS.

Asphyxia plays a part, more or less in extinguishing life when death is due to 1. Hanging 2. Strangulation and throttling 3. Suffocation and 4. Drowning.

Hanging. In hanging the body is suspended from the neck while the body-weight acts as the constricting force. This does not necessarily mean that in hanging the body should always be found suspended off all support because sometimes genuine death from hanging is recorded where the body is found touching the ground or a chair etc. If after getting the noose round the neck the body weight is allowed a chance by volition or otherwise the constriction of the neck may be severe enough to cause unconsciousness and the unconscious body would act as a dead load even if a part of it touches the ground or a chair.

There are three types of hanging, viz., suicidal, homicidal and judicial. Suicidal hanging is as common as homicidal ones are rare. In India the judicial mode of execution is by hanging.

But it should be borne in mind that there are cases where a murder is committed first and the body is suspended afterwards to give it a suicidal colour.

The death in hanging may be instantaneous. This is particularly the case when the drop is large and a sudden strain is thrown on the noose causing a fracture or dislocation of the first two vertibræ of the spinal cloumn. This is the mode of death in judicial hanging and is not asphyxial but nervous in nature. In other cases asphyxia or apoplexy or both may be the cause of death. Death by apoplexy is the least rapid. Five to eight minutes are the common fatal period in hanging though it has been possible to restore life even after half an hours suspension.

Post-mortem findings.—Fracture or dislocation of the cervical (neck) vertibræ or the appearances of asphyxia or apoplexy or both may be revealed depending upon the nature of death.

The rope mark is usually high up in the neck above the larynx or Adam's apple. The mark is oblique, running upwards towards the back of the neck and is not continuous all round. Marks of saliva running down the angles of the mouth on the chin and chest is an important sign which, when present, indicates suspension during life. Protrusion of the tongue and eyes, turgescence of genital organs with marks of semen in males and mucus in females may be found. Urine and stool may be voided involuntarily during hanging.

The rope mark is usually a well-defined furrow which may show various shades of colour depending

upon the duration of suspension. If very recent, there may only be a red blush but if it is of longer duration the base looks white, the margins red while the skin beyond appears violet. If the body hangs for a long time it looks like parchment, being hard, horny and yellowish brown in appearance.

CHAPTER XII.

WOUNDS.

For legal purpose it is not necessary to define a 'wound'. The law uses the terms 'Hurt' and 'Grievous hurt'. "Whoever causes bodily pain, disease or infirmity to any person, is said to cause hurt' (I. P. C., 319). 'Grievous hurt comprises of emasculation, permanent privation of the sight of either eye, or hearing of either ear privation of any member or joint or destruction of its power, permanent disfiguration of the head or face, fracture or dislocation or fracture of a bone or tooth and any injury which endangers life or causes the sufferer to be in servere bodily pain or renders him incapable of following his ordinary persuits, for a period of 20 days."

Wounds vary in their character according to the weapons used in their production. The various kinds of wounds are, abrasions, bruises or contusions or, incised, punctured or lacerated wounds and gunshot wounds.

Abrasions :—There are slight injuries produced by rubbing off of the superficial, epithelium and exposing

the sensitive deeper layer of the skin (Corium). This later dries and produces perchment like brown marks. Abrasions are often seen in the neck produced by the ligature in hanging and strangulation or by fingers in case of throttling. It is to be remembered that brownish marks resembling abrasions may be produced by ants biting on the skin after death.

Bruises or contusions :—These are produced by effusion of blood into the tissues—the superficial skin remaining unbroken or abraded. The effused blood shows through the skin as black or bluish discolouration producing what is known as ecchymosis. These marks change colours and disappear in 5 to 6 days.

These injuries are produced by blunt instruments and may be associated with rupture of internal organs or fracture of underlying bone.

Incised wounds .—These wounds have got clear cut edges and are gaping. They are produced by sharp cutting instruments. When produced by one hacking blow, the length of the wound is not greater than the length of the cutting edge and the wound begins abruptly and ends abruptly ; where it is produced by drawing the instrument across the surface, the wound is deep and abrupt at the beginning and tails off into a superficial end.

It has to be remembered however that incised looking wounds may be produced by blunt heavy instruments on parts where the skin is stretched over an underlying bone, such as on the scalp or over the chin.

The number, situation and direction of such wounds are important in deciding the question of self-infliction or homicide. In examining the wounds, it is necessary to note the depth and the anatomical structures involved, to decide as to how far the wound endangers life.

Punctured wounds :—These are produced by pointed weapons either cylindrical or with cutting edge—such as clasp knife, dagger, arrow etc.

The shape and size of the opening depends upon the tension of the part and direction in which the instrument has been inserted. A cylindrical instrument may produce a slit-like opening on the surface. The same instrument may produce punctures of different shapes so that when a number of punctures of different shapes are present, they might have been produced by the same instrument.

When the instrument hits against the bone, the tip may be broken off and left in the wound. Such a broken piece may offer important evidence.

Lacerated wounds :—In such wounds there is much tearing and destruction of the tissues, the edges being uneven. Sucn wounds are generally seen in machinery accidents or in wounds produced by heavy blunt weapons. As has been mentioned before, wounds, produced by heavy weapons in parts where skin is stretched over underlying bone, may look like incised wound. But careful observation in such cases will disclose that the edges are not clear cut and there may be much bruising in the

surrounding parts with perhaps fracture of the underlying bone.

Difference between appearance of wounds inflicted during life and those inflicted after death :—Owing to the fact that wounds are sometimes inflicted on dead bodies to support false charges against an enemy, it is necessary to distinguish between ante-mortem and post-mortem wounds.

Lyons puts the following characters of wounds as indicating infliction before death :—

(1). Signs of inflammation around injury. (2). Discolouration at the circumference of a patch of ecchymosis.	indicate infliction certainly before death.
(3). Marks of arterial sprouting.	indicate infliction before death.
(4). Extensive hæmorrhage. (5). Presence of coagulated blood.	indicate infliction during life or shortly after death.
(6). Retraction and eversion of the edges of the wound. (7). Production of ecchymosis.	indicate infliction during life or very shortly after death.
(8). Contusion containing firm clot or staining of the tissues that resists washing.	indicate infliction certainly during life.

Suicidal, homicidal and accidental wounds :—Suicidal wounds are generally incised or stab wounds;

or gun-shot injuries. Severe bruisies or lacerated injuries may be produced when the intending suicide throws himself from a great height.

Suicidal wounds are usually in easily accessible parts such as, on the throat, if a razor or knife is used or on the head when gun or revolver has been used or the chest or abdomen in case of stabbing with a dagger. In case of right-handed persons the self-inflicted wounds are on the left side of the body. Heavy weapons are usually not used for suicide So that severe wounds produced by instruments like a sword or a '*dah*' or an axe are not likely to be suicidal.

Multiple wounds, only one of which is sufficiently severe to cause death or immediate insensibility may be self-inflicted. But multiple severe injuries are generally homicidal. The direction of the wound when present in the upper part of the body is from above downwards and in the lower part from below upwards in case of self-inflicted wounds.

Homicidal wounds may be present in any situation. When using heavy instruments like '*Dah*', sword or '*lathi*' etc., the head is most commonly attacked. Cuts on the fingers, hands or forearm when present along with severe incised wounds in other parts of the body, invariably .indicate homicide the victim receiving the injuries on the hand in an attempt to ward off the blows. When using cutting instruments like razors or knife, the throat is usually selected and the victim is attacked while asleep. Homicidal 'cut-throat' differs in certain character-

istics from that of suicidal 'cut-throat' and these will be mentioned later.

Homicidal injuries are likely to be of such severity as might be quite impossible for any person to produce on himself. Presence of more than one severe injury almost certainly indicates murder.

Accidental wounds are commonly seen on exposed parts. These are generally bruises or lacerated wounds. Severe incised wounds are rare in accidents. Severe injuries may result from falls from a height or in road or factory accident. In deciding whether a wound is homicidal, suicidal or accidental, the position and surroundings of the injured person should also be taken into consideration.

Taking all points into consideration, it is not often easy for a medical man to say definitely whether a given wound is homicidal or self-inflicted.

Difference between homicidal and suicidal 'cut-throat' :—In case of homicide, the wound is generally below the laryngeal prominence. It is generally transverse but may be oblique running from below upwards or from above downwards, depending upon the relative position of the assailant and the victim. The wound is likely to be deep and extensive often reaching up to the vertebral column or even cutting into the bone. There may be more than one wound.

In case of suicide the wound is high up in the neck and oblique. In case of a right handed person the wound begins high up on the left side and runs downwards and to the right. The suicidal wound is said to be less severe and less extensive, but extensive

wounds even reaching up to the vertebral column has been produced by insanes on themselves. Taylor asserts that extensive wound of the throat is consistant with self-destruction.

Blood stains are often found on the back of the hand, thumb and the index finger in case of suicide and the weapon may be found close by or grasped firmly in the hand.

Cause of death in cases of wounds :—Death may occur as a direct result of the wound from injury to vital organs, severe hæmorrhage or shock. Death may also result from supervention of sepsis, tetenus, gangrene or other complications. In such cases the wound may not be sufficiently severe in itself to endanger life.

In certain conditions, comparatively slight violence which might have been of no consequence in a healthy individual, may cause alarming symptoms. Thus for instance, a slight blow in a hæmophilic will cause extensive bruising, even slight hæmorrhage is dangerous in an anæmic person and a mild blow on the head may fracture the skull of an old man with thin bones or a kick on the abdomen may cause rupture of an enlarged and diseased spleen.

CHAPTER XIII.

IDENTIFICATION OF BLOOD MARKS.

Suspected stains on clothes, weapons or other articles, should be submitted to thorough examination for the presence of blood. If presence of blood is proved, it has to be decided whether it is human blood. Presence of blood may be detected by certain chemical, microscopical and spectroscopic tests. Those, commonly employed are here mentioned.

(1). A solution of Benzidine in Glacial Acetic Acid is added to the suspected material and then a few drops of Hydrogen Peroxide. If blood is present a blue colour develops.

This test is not conclusive and a negative result is of more importance.

(2) **Hæmin crystal test** :—Scrapings from the suspected stain are taken in a drop of normal sline ('9% solution of common salt) on a microscope slide. It is dried, and then a drop of Glacial Acetic Acid is added and the whole covered with a coverslip. The slide is then gently heated to boiling. Crystals of hæmin are formed which are identified under the microscope.

(3) **Spectroscopic test** :—This depends on the fact that hæmoglobin and its derivatives produce characteristic absorption bands in different zones of the solar spectrum, which can be indentified by an instrument called spectroscope. Thus oxyhæmoglobin produces 2 absorption bands in the green between the D and E lines of Frannhofer. In old stains

spectrum of oxy and methæmoglobin is obtained and is characterised by the presence of two more bands—one in red and the other in violet.

To decide whether the blood is of human origin or not serological or precipitin tests are done.

If fresh specimen is obtained, microscopic appearance of corpuscles should also be noted as mammalian blood differs in the appearance of its corpuscles from those of amphibian or avian blood. Human red corpuscles are biconcave round discs of an average size of 7.4 microns in diameter.

PART VII

PRACTICAL CROSS-EXAMINATION.

IN

CRIMINAL CASES.

(*with hints and various models*)

PART VII

CHAPTER I.

CROSS-EXAMINATION IN CRIMINAL CASES.

What is cross-examination :—It is one of the most powerful and effective machinery hitherto known to human knowledge for testing the veracity of a witness making statement on oath. The objects of cross-examination as has been said by Powell "are to impeach the accuracy, credibility and general value of the evidence given in chief ; to sift the facts already stated by the witness, to detect and expose discrepancies, or to elicit suppressed facts which will support the case of the cross-examining party." It will thus be evident that the necessity of successful cross-examination in a criminal trial is of the highest importance.

What questions may be asked in cross-examination :—The British law gives an advocate for the accused almost unfettered discretion as to the questions which he may put to a prosecution witness whose credibility he seeks to shake or impeach. But a cross-examining lawyer should not abuse the powerful weapon which law places at his disposal. Generally speaking a witness in the box may be asked "questions which affects his veracity, such as whether he, has been convicted of a crime ; whether he is a relation, or intimate friend, or under any special obligation to the party who calls him ; whether he is identified or connected with him in interest ; whether he has not

been in terms of enmity with the adverse party; whether his memory is not defective generally, or as to the particular transaction; and whether he has been bribed or paid to give evidence". The Judge however may in all cases disallow any question put in cross-examination which may appear to him to be vexatious and not relevant to any matter proper to be enquired into in the cause or matter[1].

Length of Cross-Examination :—There is nothing in law which will lay down any hard and fast rule to determine the time permissible for concluding the cross-examination of a particular witness. The gravity of the offence is some times considered to be a measure for fixing the length of cross-examination but that is not a correct rule of law. In fact there is no rule of three in cross-examination. Thus the cross-examination in a capital case may be eventually much shorter than what is needed for successful defence in an assault case. It was therefore laid down in the case of *Emp.* v. *Abed Ali*[2], that the order of a Magistrate fixing an arbitrary time limit namely 5 minutes for the cross-examination of a witness was illegal. In other words so long as questions put by the cross-examining lawyer are relevant to the case it is not within the rights of the Court to stop him short or to guillotine him. The trend of the decision of all the High Courts in India is to permit as much latitude to the cross-examining Counsel for the defence as is consistent with his defence. The right

1. Powell, page 465.
2. 34 C. L. J. 172.

of the accused's Counsel to cross-examine the witness is a statutory right, and is no concession. It was therefore held in the case of *Emp.* v. *Sadasiv Sing*[1], that an application by a defence Counsel to the Sessions Judge to permit him to proceed with the cross-examination next day on the ground of his unpreparedness was a legitimate prayer although such latitude could not be demanded as a matter of right. To put things in a nutshell, a lawyer appearing for the defence may prolong the cross-examination as long as it may be necessary for successfully tackling an implacable and stubborn witness determined to lie at all costs. The only limitation in this regard is a general maxim laid down by Wendell Phillips in his Treatise on Evidence, namely, cross-examination is a bayonét ; you can do anything with it except sitting on it. As a general rule cross-examination should not be lengthy. It is a safe rule of prudence sanctioned by age long experience of lawyers of eminence that cross-examination in a criminal case should be pointed and concise. It is best to remember in this connection the well known motto of Rufus Cohali, the great American cross-examiner of world wide celebrity and commonly known as the Wizard of the Court room "Never cross-examine any more than is absolutely necessary. If you do not break your witness he breaks you". Cross-examination, after all is an art and can be well mastered with practice based on natural skill.

Discretion in cross-examination.—In a criminal

1. 41 Cal. 299.

case, a cross-examiner must handle the witness with the utmost circumspection. This does not mean that he should be shy, halt or show lack of determination. What he should bear in mind is the likely answer to every question he puts and its effect generally on the case. In order to achieve any measure of success the lawyer should try to have the witness in his grip, in other words, he should not allow the witness to stray and ramble. A witness who attempts at shirking a pointed question unwillingly betrays himself. The psychology of the deponent therefore is an important factor which no lawyer can afford to miss without allowing the result of his cross-examination to suffer materially. If there is any the slightest reason to believe that the witness is fencing, a determined effort should be made at the earliest opportunity to settle accounts with him. It is useless in such cases to agree with the witness or to let him have the upper hand by loosing temper. Calmness and composure while tackling witnesses of this type will always be found to be of inestimable value. Similarly levity or lack of gravity would put the witness at an advantage; he will probably get used to the Court atmosphere and seize every opportunity to exercise a good deal of discretion in selecting suitable answers in the interval that may be occasioned by a futile attempt on the part of the cross-examiner in awakening the witness to the gravity of the situation. A golden rule to observe would therefore be to assume a personality which the witness may feel inclined to respect.

A cross-examining lawyer need not be a bully. He should always remember that courtesy to a witness who has not shown any indication of determined partisanship often pays more than it is expected. Soft, sweet and unambiguous questions generally elicit answers equally straight and terse. The old method of a cross-examiner hurling a thunderbolt at his victim is daily getting into disfavour. Let the witness in the box take the cross-examiner into confidence. A bumptious begining would put the witness, if he is a timid man, into confusion and provoke an average witness whose sense of dignity or self-respect, once hurt, may foster a desire to outwit the lawyer by evasive or sarcastic answers. No doubt, in certain cases, the lawyer will have to be stubborn, curt, or even offensive but such cases have to be selected from the demeanour and the general attitude of the witness as revealed by his deposition-in-chief or by answers to a few crucial questions. With regard to the attitude of a lawyer towards the witness whom he is cross-examining the best maxim to go by would be Paul Brown's advice which is as follows—"Be mild with the mild—shrewd with the crafty—confiding with the honest—merciful to the young, frail to the fearful,—rough to the ruffian, and a thunderbolt to the liar. But in all these never be unmindful of your dignity. Bring to bear all the powers of your mind not that you may shine, but virtue may triumph, and your cause may prosper."

Treatment with witnesses.—While cross-examining a witness' efforts should be made to be as polite

as possible. The questions should be clearly framed. The feeling of the witness should not unnecessarily be offended by using insulting expressions. Age has to be respected, and an old person of position, simply because he happens to be in the witness-box, should not lose his due share of courtesy as a gentleman.

Witnesses who come determined to support a party will do that; and the cross-examining pleader will find that they are generally prepared with the answers to questions likely to be put to them in cross-examination. While cross-examining witnesses of the latter class, the cross-examining pleader will try to get at the motive or intention or interest which has induced them to depose in favour of one side. There are witnesses who have no means of livelihood other than acting as touts in Courts, fomenting litigations and deposing whenever necessary for one party or other on receipt of remuneration. These witnesses often overact their parts. To witnesses of this class a stubborn attitude should be assumed, and every possible attempt should be made to expose them and their real worth. There is another class of witnesses, besides those mentioned above, who do not belong to any party but come to depose to facts as known to them, at the request or entreaties of persons who cite them. To witnesses of this last category the cross-examining pleader should be all respectful and in case of any doubt, attempt should be made to ascertain whether the witness on account of laps of time, or loss of memory or defective observation, made incorrect statements before the Court.

Pit-falls in cross-examination :—Irrelevant fishing questions without any definite purpose are more dangerous than useful. As an illustration of this principle it can be said that questions very frequently helped the witness to introduce in the cross-examination materials which would be strictly inadmissible in evidence, if the prosecutor sought to put it in. Thus where a lawyer takes the risk of putting a question regarding the character or reputation of the accused, he is opening up an avenue to his opponent to let in evidence all that could be said respecting any dark spot on the character of the accused which section 54 of the Evidence Act would debar the prosecution from putting in evidence. Similarly if a particular portion of a document, helps the accused and the rest of it supports the prosecution, it is extremely unsafe to put to the witness any question regarding the document as it is just likely that he would supplement the prosecution case by quoting exactly that portion of the document which goes against you. A third instance of reckless cross-examination is found when questions are put to a witness affecting certain points in examination-in-chief which is obviously of a neutral character so far as the accused is concerned. It may be that cross-examination will give that colourless examination-in-chief a definite dye which will be difficult for the accused to wash off. Thus before begining to cross-examine a witness the lawyer for the accused should ask himself what incriminating fact or factor he has proved. If the witness has not proved anything definitely dangerous

it is nearly always an unwise thing to touch him. Again it may be that a witness has said something definitely against the accused, but witnesses preceding him have stated something which either negatives his statement or obviously makes him ludicrous, it is hardly profitable to tackle him at any length. It often happens that detailed cross-examination bring out materials which reconciles his previous statement as it stood before cross-examination with those of others who had gone before him.

Cross-examination is an art which can be learnt only by actual practice ; and no amount of theoretical instructions, however sound, can coach a junior practitioner to any efficient standard. The hints given in this part are intended to set on work the thinking faculty of young man in a particular direction ; and it is hoped that this power of thinking gradually developed in the practical field, will be of material help in shaping the legal acumen of the junior lawyer for the purpose of cross-examination. It is difficult to lay down any hard and fast rule which a legal pratitioner should follow in cross-examining a witness. The range of cross-examination is so wide that long experience alone can teach what should be the best way of cross-examination in a particular case.

Preparation for conducting a case.—A practitioner, when he takes up a case, should thoroughly study not only the points in favour of his client but also those against him, so that he can fully meet his adversary's case during the trial of the case. It

needs hardly to be mentioned that every lawyer must devote his whole-hearted attention to the case in his hand and study its facts and legal aspects thoroughly and find out authorities in his support.

Opening of the case.—The pleader appearing for the prosecution should give a brief account of his case at the time of opening, in a clear and logical way, and this can only be done best if the points were previously thought of and arranged.

Order of examination of witnesses.—Ordinarily prosecution pleader will examine his witness to substantiate the allegations made and to give a denial to points, if any, raised by defence which are not admitted by prosecution. This is examination-in-chief. After the examination-in-chief is finished the accused's pleader will cross-examine prosecution witnesses. The functions of cross-examination is to test the value of the statements made by a witness examined by the prosecution and this is done by putting such questions to the witness as will bring to the light the veracity or otherwise of his statements made in examination-in-chief.

Necessity of studying the record.—The necessity of studying the record can never be too much emphasised. This is what should be done by the pleader in every case, before proceeding with the cross-examination. A pleader, who has a through grip of the facts, has in his hands the most powerful weapon to fight his adversary with. After the facts have been gathered the first thing that most pressingly demands the lawyer's attention is the record. He should, at

the out-set,ascertain if the documents of his adversary were filed within the time allowed by the Court for the purpose. (e.g. in 145 Cr. P. C. case). The reason for the inspection is obvious ; as unregistered documents, filed out of time, are liable to be rejected by the Court as being suspicious. Hence objections on this ground, taken at the inception of the case, often stand the client in good stead, as they may ultimately result in the rejection of the documents to the great disadvantage of the other party. What the pleader should do, after these preliminaries, is to subject the documents (specially the unregistered ones) to the closest scrutiny with a view to finding out such circumstances as are likely to create suspicion in the mind of the Court. Thus scratches or erasures at material parts of a document, found out in the course of inspection, and pointed out to the Court and the witness who comes to prove it, may go a great way, in discrediting the documents ; similarly stitching of a cheque book may, to a discerning eye, afford ample materials for suspicion that it has been interleaved and re-stitched with forged counterfoils for creating evidence. It often happens that account books are filed by a party and used as evidence. The pleader in such a case should study the accounts carefully (e. g. in a case of falsification of accounts) and it is not unlikely that he would be able to find out suspicious and bogus entries here and there.

Memorandum of evidences to be taken by the cross-examining pleader.—Unless gifted with a prodigious memory which refuses to forget any thing it once

registers, the pleader who desires to cross-examine should take down a faithful and close memorandum of the deposition, as the examination-in-chief goes on, marking the important points. This will be of immense help to him at the time of cross-examination. He should note down particularly those points which his client does not admit, and never allow any one of them to escape unchallenged in cross-examination. Of course, on points which his client neither admits nor denies, the cross-examination need not necessarily be long, and they may be simply touched on in passing.

Necessity of studying law for cross-examination.—A through knowledge of law on the subject involved in a particular case under trial is imperative to enable a practitioner to do justice to his client's cause by carefully cross-examining his adversary's witness. I like to illustrate the above proposition by concrete instances. Take for example that a witness has proved a certified copy of document by simply saying that the original is lost. The cross-examining pleader should remember that, if he can elicit in cross-examination that the document is not really missing and that it could be produced by the party by exercising due diligence, then the certified copy attempted to be proved will be rejected by Court under section 65 of the Evidence Act. Besides, if it is shown in cross-examination that the original document was not called for from the proper party, its certified copy attempted to be proved in examination-in-chief would be rejected under the law; because until a party has

exhausted all the means prescribed by law for compelling a person to produce a document known to be in his possession, and so long as the original is procurable or its loss is not satisfactorily accounted for, secondary evidence cannot be admitted.

Evidence to be direct.—All facts except contents of documents may under the Evidence Act, be proved by oral evidence. Oral evidence, however, has to be considered by Courts in conjunctions with the documentary proofs on the record, and the probability arising from all the surrounding circumstances of the case. In fact, Courts have to consider the full force and the joint result of all the evidence, direct or presumptive, upon a particular point. It has been pointed out by their Lordships of the Privy Council that oral evidence is ordinarily looked upon with great suspicion and that such evidence when opposed to the strong improbabilities of the circumstances to which it relates, or is weakened by the mode in which it is given, may prove of little avail in our Courts of Justice. It has also been pointed out by the Privy Council that oral evidence should receive its due weight and is not to be rejected from a general distrust of oral testimony, in the absence of some cogent reasons, to discard the evidence. Oral evidence adduced before the Court must, in all cases, be direct. The law on the subject has been laid down in the Indian Evidence Act. The foundation of the rule lies much deeper. Instead of stating as a maxim that law requires all evidence to be given on oath, we should say that the law requires all evidence to be

given under personal responsibility. i. e., 'every witness must give his testimony under such circumstances as expose him to all the penalties of falsehood that may be inflicted. The true principle, therefore, as laid down by Best in his Law of Evidence (vide 8th Edition, Page 435) is that all second-hand evidence, whether of the contents of a ducument or of the language of a third person, which is not connected by responsible testimony, with the party against whom it is offered, is to be rejected. Hear-say evidence is rejected, because it is not given on an oath, because it cannot be tested by a process of cross-examination, because it implies that some better testimony might be available, and because it has a tendency to protract cases to an embarrassing length ; and lastly because it is intrinsically weak.

CHAPTER II

HINTS FOR CROSS-EXAMINATION.

Cross-Examination in 145 Cr. P. Code. Proceedings :— Here I shall say a few words about the cross-examination of the witnesses who prove in examination-in-chief, possession of the disputed land by any of the parties (145 Cr. P. C. and rioting cases). To such witnesses the cross-examination pleader should ask whether he knows the land. If the witness answers in the affirmative, he should be asked to give boundaries

of the property in question. The witness may give some boundaries and the pleader has to verify them with reference to the record. It will be seen that many witnesses will not be able to give correct boundaries on four sides. If it is suspected that the witness does not really know the land or has but some hazy notion about its location, or that he has some-how been coached to give the boundaries alone, the knowledge of the witness regarding lands on the boundaries of the disputed land may be tested and the witness should be required to give boundaries of the land, say, on the north or on the south of the property in dispute. If the witness fail to give correct boundaries of the said lands, or if he cannot give any boundary, it may be argued, later on, that the witness's knowledge of the locality is too vague to be first-hand. Then even if the witness know the land, the pleader should test the knowledge of the witness by putting questions as to what led him to see cultivation or possession of the land almost every year as said by him in examination-in-chief. With this end in view the witness may be asked if he has land close by, if not, what led him to go to the field so often ? Some witnesses, of the lowest class, who even though they have no land close by, will be bold enough to say that they have lands at a distance of few *Bighas* from the land in dispute. If your instructions be that the statements are incorrect, ask the witness to give boundaries of his land, *Dag* number of his plot in the *Settlement Khatian*, the rent payable by him, the name of his landlord and so forth. It will have to be

ascertained from cross-examination of other witnesses, if those statements have any foundation. Then a witness may be an old one who has some-how formed an impression about the possession of the land but who has not actually seen any man possess or cultivate the land as he could not have possibly gone out due to decrepitude of age, even though it is possible that he has land adjacent to the land in suit. To such a witness the pleader should ask whether he can stir out of doors and suggest if some junior member of his family looks after his properties and cultivation. If it transpire that the old man has not been to the field, say for the last ten years, his evidence of possession for the said period will be at best hear-say, and consequently, of no value. Similarly, the evidence of a person who ordinarily stays out of his village will be of no great value and cross-examination may be directed in this line.

Cross-Examination of witnesses who prove documents:—To a witness who proves a document, questions should be asked with a view to ascertain if he was present at the time of the execution or if he signed the document afterwards at the request of any particular person. Attempts should be made to get details of the transaction covered by the document to test his knowledge. It may appear that though the witness knows nothing about the transaction still his name appears as a witness into the document. It may be that the witness turned up after the transaction was closed and the document executed. If the document be a mortgage bond or a *Kobala*, the

witness may be asked as to who supplied the boundaries and who wrote the document ; either the scribe wrote it him-self or at some body's dictation, and who were present at the time, and in which order they came and if any body was sent for or chanced to be present accidentally. Similar and other questions according to the circumstances of the case may be put to the other witnesses if necessary.

Cross-Examination on the probabilities of a case :— It is the duty of every cross-examining pleader to get such facts and circumstances by cross-examination of his adversary's witnesses as will make the case set up by his client very probable.

CHAPTER III

Cross-Examination of a witness who is supposed to have proved a forged document :—Under this head can be classed cases like the following :—

(A) Where the witness has proved a document and has said that he was present at the time of the execution of the document,

(B) Where the witness has proved the hand-writing of the scribe and the signature of the alleged executant, but has not deposed about the fact of the actual execution.

(C) Where an old document has been produced and its custody proved by the witness and the witness has also proved the hand-writing of the document.

I shall deal with these cases one after another. (A) If the document is denied by accused or opposite party, his pleader may cross-examine the scribe who may prove the deed by putting questions like those given below. Of course questions will vary according to the circumstances of each case and the defence set up.

(1) What is your means of livelihood ? How much do you earn in a month ? How many documents do you ordinarily write every month ?

(2) Can you remember particulars of all the documents written by you ? Where you known to the accused or opposite party from before ? Or did you see him for the first time at the time of the execution of the deed ?

(3) What special reasons are there for your remembering the details of the document in question ?

(4) How far is the Registration office from the place of the alleged execution of the document ?

(5) Why was not the document registered ?

(6) If the deed be a bond executed by the opposite party ask, why did the executant borrow money by executing the disputed document ?

(7) Is it not a fact that he himself is a money-lender ?

(8) Did not the accused or opposite party purchase a property for a much larger sum at or about the time of the alleged execution of the document ?

(9) Is there any party-feeling in the village ? Do you belong to the complainant's party ?.

(10) Is it not a fact that the complainant and the accused have not been on speaking terms from a long time ?

(11) Are not the witnesses to the bond men of complainant's camp, being his relations, debtors and the like ?

(12) Did not the complainant promise to wreck a a vengeance upon the accused at the time of a boundary dispute between him and the accused in the year......?

(13) Can the accused sign his name ? If so, why did he not sign the bond ?

(14) Is it not a fact that the accused signed his own name in a registered document ? (Give particulars.)

N. B.—These and similar questions will suggest enimity between the parties, and motive for creating a forged document.

(B) In this case the witness has simply proved the hand-writing of the scribe and the alleged signature of a party. In a case of this nature following questions may be put :—

(1) Is the scribe alive ? If so, where does he live ? (Just to show that the scribe could have been called.).

(2) How do you know the scribe's hand-writing ?

(3) Did you see the scribe write a document else where ? If so, when and where ?

(4) Did you study the special characteristics of the scribe's hand-writing ? If so give particulars.

N. B.—In a case where the document appears to have been really written by a particular man, it is not

necessary to press the witness any further. If your instructions are that the alleged scribe did not write the document then try to call the scribe to get his denial.

(5) Is it not a fact that one X of the village writes document for accused? (If possible confront the witness by showing some documents written by X and executed by the accused.)

Then comes the accused's signature, ask the witness :—

(6) Did you see accused sign his name before? If so, when and where? Hand over to the witness admitted signature of the accused and the alleged and disputed signature suggesting the differences you notice. (If there is any difference in spelling, first ask the witness to give the ordinary spelling of the name of the accused as spelt by him.)

(C) In this class of case the witness might have proved custody of a document over 30 years old and possibly the hand-writing of the scribe and the signature of deceased executant. *Re-custody, ask* :—

(1) When did you last see the document? How many times in all did you see the document?

(2) Was the document ever shewn by complainant's father to complainant in your presence? If so, what was the occasion?

(3) On what previous occasions had you any necessity of seeing the document? Did you at that time read the document in full or see it from a distance?

(4) How do you identify the document to be the one you say you saw?

(5) Is it not a fact that after complainant's father's death his house was searched by the police in connection with a theft case ? Was not a list of documents then made ? Did the police make any list of documents and was the document in question included therein ?

(6) Did you depose in any other case on behalf of the complainant ?

(7) Is it not a fact that the land covered by the document was entered in the accused's father's name in the last Settlement Proceedings ? Did you not then depose before the Settlement Officer ?

(N. B. :—Examine the document carefully and suggest to the witness that in the folding portions of the document there is no writing and if this does not appear to him to be strange. If you notice that in portions of the document ink has soaked—ask the witness if he sees indications of ink soaking in those portions. In this connection the pleader should consult Stamp and Registration Law and ascertain if the document had been written on a properly stamped paper and if its registration was then compulsory. Forged documents may be drawn up on any stamp which a party can lay hold on and an ordinary forger innocent of old stamp law may put in the consideration in the deed at random for which the stamp on which the document is written may be either insufficient or excessive. Instance have happened in which a Hindu forger while forging a document alleged to have been written by a Mahomedan scribe, put in the name of a Hindu Deity (as he does in other documents

written by him) at the top of the document, thus indicating that the deed was unquestionably forged. Every suspicious document should therefore be very carefully scrutinized by the cross-examining pleader before he begins his work of cross-examination. Ordinarily documents are forged by giving false dates and purporting to have been written by a deceased but recognised scribe of the village. So try to get hold of genuine documents in the hand-writing of the said scribe and compare the spelling and the peculiar features of his hand-writing with those in the disputed documents. These hints if carefully followed would lead to satisfactory results.

For cross-examination regarding the signature of the alleged executant consult the questions given in case (A).

CHAPTER IV.

Cross-examination in a sanction case :—Under the old law a party to a case might get sanction from the Court for prosecuting a party, or a witness, for giving false evidence, or for proving a forged document in a judicial proceeding, or for any other offence mentioned in section 195 of the Crimial Procedure Code. But under the amended Criminal Procedure Code, which came into force from the 1st september 1922, a party to a suit or proceeding cannot get sanction from any Court for prosecuting any person in respect of offences mentioned in section

195 of the Cr. P. C. Under the new law, the party may move the Court for prosecuting a witness or a party; and if a *prima facie* case of offence committed is established, the Court will direct prosecution of the offender by sending a copy of the order or through one of its officers who will lodge a complaint in respect of the offence. No notice of any application under section 195 Cr. P. C. need ordinarily be given to the opposite party, the object of the sanction being just to remove a statutory bar; and in a fit case the Court has absolute discretion in directing prosecution of the alleged offender[1].

Application for sanction under section 195 Cr. P. C. is ordinarily made in the trying Court[2]. The successors in office of the officer who tried the case has also jurisdiction to grant sanction or order of prosecution[3].

Ordinarily, when the application for sanction can be disposed of by referring to the record and judgment, no additional evidence is required to be adduced. But where sanction is sought for in respect of offences committed outside the Court, e. g., for snatching away attached property, disobeying an order of injunction, etc., the party applying for sanction for prosecution is required to make

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1. *Hume* v. *Puresh Chunder Ghose.* 41 Cal. 446=A. I. R. 1914 Cal. 597.
2. *Begu Singh* v. *E.* 11 C. W. N. 568 F. B.
3. *Shaikh Bahadur* v. *Shaikh Eradutullah.* 14 C. W. N. 798. (Special Bench case).

out a *prima facie* case by adducing evidence in Court, and in some cases opportunities are also allowed to the opposite party to adduce rebutting evidence[1].

When a Court is moved for prosecution of a person for giving false evidence, the Court is required to be satisfied that the deposition containing the alleged false statement was duly recorded and read over and explained to the witness as required by law; and that the witness admitted the statement to be correct.

Unless the deposition was taken on oath and unless it was read over to the witness and was admitted by him to be correct, the deposition which is the foundation for prosecution will he weak evidence in the Criminal Court.[2] Orderly of the Court, where the witness was examined, is generally called to prove that he had administered oath to the accused, and the Bench Clerk or some other officer is also examined to show that the deposition had been read over and explained to the accused, and that he admitted his evidence as recorded by the Court to be correct. The orderly may be cross-examined by putting questions as given below :—

Questions.

(a) Is it not a fact that a peon is deputed to the Court on guard duty every day ?

(b) Is it not a fact that the peon on guard duty administers oath during your temporary absence,

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1. Read Pt. II. Ch. XI, Page 176-177. 2. See page 359, para 2.

e. g., when you go to call a pleader or leave the Court on some private business ?

(c) Are you sure that you administered oath to the witness in question ?

(d) What is the reason for your supposing that you administered oath to the particular witness ?

(e) To how many persons do you administer oath every day ?

(f) Did you know the witness from before ?

(g) If so, what was the occasion for it ?

(h) Were you on leave at any time during the last year ? If so, when ?

(i) Do you go at times on casual leave to attend to private businesses ? Are you sure that you attended the Court on the very day the witness was examined ?

(j) Do you remember distinctly that this witness was examined ? Who was the presiding officer at that time ?

(k) Is it not a fact that the deposition after it has been recorded, is handed over to you for making it over to the *Sheristadar* or *Peskar* for reading it over to the witness ?

The following questions may be put to the *Peskar* who might have proved the deposition and the signature of the witness at the bottom.

Questions.

(i) I think your work is very heavy in the Court and that a large portion of your time is devoted to writing out of orders on petitions filed by the parties.

How many witnesses on an average are examined by the Court in a day ?

(ii) Is it possible for you to faithfully read over and explain the deposition to all witnesses examined by the Court ? Here take the original record and make over the deposition to the *Peskar* and ask him to read it out forthwith and translate as he goes on. You will see that in some cases the Bench Clerk due to his inadequate knowledge of the English language, will not be able to decipher all the words in the deposition, and he will create a scene in his attempt to translate the deposition, which is recorded in English, in vernacular. Very often the translation will not be literal and you would request the Court to note the English portion and the translation thereof, whenever you find the translation not up to the mark ask the Court to note the same. You will, besides, note the time which the Bench Clerk takes in reading and explaining the deposition of one witness, and argue later on that this Bench Clerk could never have literally translated the depositions, having regard to his other multifarious duties. In a case where a pleader thinks that a witness is giving palpably false evidence, he should request the Court by a petition, to note the name of the person who administered oath to the said witness, and insist upon the deposition being explained to the witness in presence of the Court and a note being made by the Court to this effect. If this procedure is followed, an embarrassing situation, likely to arise in ordinary cases, will be easily avoided when in due course of

time an application is made for sanction to prosecute the witness for perjury or when the witness is on his trial in a Criminal Court. Further questions in continuation will be as follows :—

(iii) Is it not a fact that the depositions are ordinarily made over to some clerk in the office for explaning to the witness ?

(iv) Is it not a fact that sometime witnesses sign their depositions without reading them ?

(v) Is it not possible that, in some cases, through oversight or for want of time, depositions are not explained *in extenso* to the witnesses, though their signatures are taken at the bottom ?

Where sanction is asked for knowingly using a forged document as genuine in a judicial proceeding, the party applying for sanction is required to show that the accused filed the document in Court. The pleader filing the document may be examined to prove that the accused had made over the document to him and that he had filed the document in Court on behalf of the accused. The pleader may be cross-examined as follows ;—

(a) I suppose you have extensive practice, and that it is not possible for you to remember what papers you got from which client and when ?

(b) You believe that the document in question was made over to you either by your client or by some body on his behalf or by your clerk. Hence I take it that you are not in a position to say as to the person you got the document from ?

In a case where collection papers have been dis-

credited, the pleader for the opposite party may ask the witness the following questions :—

Questions.

(a) In whose hand-writing are the disputed entries ? Is not that *Gomosta* dead ? Is not the opposite party a big Zemindar, and his estate managed by *Managers*, *Naibs* and *Gomostas* ? Is it not likely that the opposite party had reasonable grounds for believing the papers to be genuine and kept in due course of business ?

Where sanction is asked for in respect of forged title deed or a forged bond—circumstances which may tend to show the genuineness of the document may be attempted to be elicited by cross-examining the witnesses for the petitioner who has applied for sanction or who may be prosecuting the accused in a Criminal Court. The following questions may serve as hints for proceeding in such cases :—

Questions.

(i) Is it not a fact that the Court having refused adjournment to the opposite party (i.e., your client), the latter was unable to examine some respectable witnesses to the bond who were ill at the time the case was taken up ?

(b) Is it not a fact that the petitioner (or camplainant) denied execution of a bond in suit brought against him by A. B., and that the said suit was decreed in full ?

(c) Is it not true that the opposite party has got some decrees against the petitioner, and is about to

execute them and that the present application for sanction has been filed just to put pressure on the opposite party for avoiding payments under the decrees? (It should be borne in mind that no Court will grant sanction, or order of prosecution, to satisfy private malice or grudge of any person.)

N. B.—Sanction is not ordinarily given when appeal is pending from the judgment of the primary Court.

Where there is unusual delay in applying for sanction the pleader for the accused should try to get out in cross-examination the reason for the delay and it may be argued that the sanction should be refused on the ground of delay. (See Part II Chapter XI Pages 174 to 160.)

CHAPTER V.

Cross-examination of a Medical witness who has proved that the injuries on the person of the deceased were homicidal and not suicidal:—

Suppose the witness has said in examination-in-chief that he is Civil Surgeon during the last 20 years and that during this period he held post-mortem examinations of over 1000 dead bodies including about 100 cases of suicide; that he has seen the post-mortem report and considered the nature of the various injuries on the person of the deceased and is of opinion that the wounds could not have been caused by the deceased himself, that there are few injuries

which might be self-inflicted but that most of the severe injuries could not but be homicidal. Suppose the defence case is that the deceased committed suicide and the accused was implicated out of grudge. Then the cross-examination of the medical witness may be directed on the lines indicated below. (See Part VI(A) Chapter XII Page 760)

Cross-examination :—Q. Have you seen the injury on the neck of the deceased ?

A. Yes.

Q. Could it not be inflicted by the deceased by his right hand ?

A. No.

Q. Could not the injury over the left shoulder be self-inflicted ?

A. No. The injury leads upto the chest bone. Such an injury could be caused by a severe blow from the left side. The wound was most probably caused by a person, from behind, when the deceased was lying on his right side with his left side uppermost.

Q. Was it possible for the deceased to inflict the said injury with his right hand ?

A. Impossible.

Q. What is your opinion about the injuries on the left side ?

A. These could be caused while the deceased was in that position.

Q. What is your opinion about the wound on the back of the neck ?

A. It was in my opinion caused by a person from

behind while the deceased was either sitting up or standing. It is not possible for a man to inflict such an injury with his right hand. I, for myself can not conceive that, I can cause such an injury with my right hand.

Q. Could not the injury on the abdomen be inflicted by the deceased himself ?

A. The report says that the man was wearing a piece of cloth at the time. If the deceased were wearing a cloth, I would expect corresponding cut in the wearing cloth also.

Q. How do you say that these injuries must have been caused by a third person ?

A. I say this because the direction of the wounds were downwards and upwards. It is impossible for the deceased to cause such wounds himself.

Q. In what posture was the deceased at the time he got the injuries ?

A. He must have been lying at one stage and must have been sitting up or standing at another stage.

Q. What is your opinion ? Did the deceased struggle ?

A. In my opinion, he got no time to struggle, otherwise there would have been bruises and finger marks at least in some parts of the body. Absence of marks shows want of struggle and inability to attempt at self-defence.

Q. Is Medical Science perfect ?

A. It is not perfect. But I can't say that it

is imperfect. Opinions given after careful consideration of all the facts and circumstances of the case and devoting particular attention to the descriptions of the wounds would be almost perfect.

Q. Is your opinion infallible in every case ?

A. I give my opinion after careful consideration and I trust they are correct.

Q. Do you agree that suicidal wounds are some times found in unusual position ?

A. Yes ; in very rare cases.

Note.—The cross-examining pleader should study the post-mortem report first ; if possible he should consult a medical man before begining cross-examination or he may study some standard treaties on Medical Jurisprudence. If he finds that the opinion of the medical witness is sound, he should be careful not to put unnecessary questions, as the answers given may strengthen the prosecution case. In such an event superficial cross-examination is best and arguments based on prababilities arising out of the facts and circumstances elicited in cross-examination of other witnesses may be advanced.

CHAPTER VI.

Cross-Examination in a dacoity case.

In a very large majority of cases where prisoners are tried for an offence of dacoity, the Crown relies on the (i) identification of the prisoners or (ii) recovery of articles alleged to have been taken away by the culprits. The defence in such cases

seeks to make out a case of mistaken identification of the accused or questions the identifiable character of the things recovered from the culprits. In a comparatively few cases, the occurrence is even challenged. Let us suppose that some of the prosecution witnesses pretend to say that they know the accused either by names or by appearances. As usual, read the F. I. R. carefully and then ask the Judge for permission to have an inspection of the copy of the statement made by the witness to the Investigating Officer and recorded under Sec.162 Cr. P.C. Then begin like this :—

Q. You have identified prisoner Rhaman, havn't you ?

A. Yes.

Q. Did you know him from before the occurrence ?

A. Yes.

Q. Could you recognise Rhaman at the time of the dacoity when you say he caught you by the throat ?

A. No. He wore a mask.

Q. Did he speak at that time or demand of you any thing ?

A. He demanded the key from me and asked me to keep quiet.

Q. Was he loud or did he speak in whispers ?

A. He shouted.

Q. Did you recognize his voice ?

A. No. I Simply thought that the voice was familiar.

Q. I presume he did you no harm when you made over the key and kept quiet ?

A. Yes, he bound me hands and feet.

Q. How long did you remain in this condition ?

A. Until 15 minutes after the dacoits had left when my neighbour Jogen stepped into my room and unfastened the knot round my hands and feet.

Q. I don't quite follow you. Would you want us to believe that you were throughly awe struck and felt like one in a swoon ? or would you pretend to say that you watched the men and surveyed their features carefully as the accused had left you severly fastened to the leg of a bed-stead.

A. At first I was stunned and then after a while I recovered myself.

Q. How long would you say you were senseless ?

A. 10 minutes and so, I gained back my senses about the time the culprits were about to make good their escape.

Q. When did you think of sending information to the Police Station ? How long after the dacoits had left ?

A. Next morning at about 7 A. M. I sent my servant to the Police Station.

Q. Did you give him a full account of the case as known to you ?

A. No. I only told him to inform the Police people that a dacoity had been committed overnight.

Q. Did you give him a list of the articles taken away by the dacoits ?

A. No. I only told him that things worth some thousands had been taken away.

Q. Did you tell your servant anything further ?

A. No.

Q. Are you sure you or your people gave him no idea of articles and jewellery lost.

Ans. I think so. (This short of answer will invariably come when there is some thing difinitely mentioned in the F. I. R. about articles and their description.)

Q. Now, if your servant gave a list of ornaments and jewllery in the F.I.R. he certainly did so contrary to your instructions ?

Ans. I have no answer. The servant must have got some idea from my wife about her ornaments taken away.

Q. When did the Police Officer come ?

Ans. At about 2 P. M.

Q. I hope you gave him a list of your articles there.

Ans. No. I gave him a list 2 days after.

Q. Now, would you be surprised if I say that neither your list nor that given in the F. I. R. contains Ex. (5), (6) and (7) which you have identified.

(A) Those articles belong to my daughter-in-law.

Q. By the way, did you tell the first informant that you had been caught by a very strong-built man of extraordinary height ?

Ans. No

Q. Did you say when the Police Officer came to your house that the man who had caught you had extraordinary features ?

Ans. No.

Q. Did you say at any time that the culprit wore a mask ?

Ans. No.

Q. Did you say that you would be able to identify the accused, if arrested ?

Ans. No.

Q. You say the man's face was covered, how do you then identify him ?

Ans. By his general features. (The answer is hopelessly silly in view of the answers to above questions).

Q. Is it a fact that you identified Rahim at the last identification parade as the man who had asked you to keep quiet ? (Confront him with this question and then put this question to the officer who held the parade when he comes to depose).

Ans. No.

Q. Do you know Rahaman is exceptionally strong built and has a peculiarly husky voice ?

Ans. Yes.

Q. Had the dacoits any light or torch with them ?

Ans. Yes ; they had torches.

Q. Was there any lamp or lantern burning inside the room where you say you were seized by dacoit Rahaman ?

Ans. Yes.

Q. I take it then that you had no difficulty for want of light in surveying the men who entered your room for finding out articles and valuables ?

Ans. I was dumb with fear and felt like a cold shiver down my back.

Q. Now, will you look at Rahim and say if he is

as much spare built and short as Rahaman is massive, muscular and tall ?

Ans. Yes. (Draw attention of the Jury and the Judge to this fact).

Q. Is it a fact that you identified 3 other persons as suspects who are in no way connected with the crime ?

Ans. Yes, I was mislead by similarity of appearances.

CHAPTER VII.

Cross-Examination of a Search-Witness.

Before proceeding to cross-examine a witness to a search the lawyer should read carefully Part I Chapter IX Pages 87-91 devoted to the treatment of the law on the subject. It will be seen on a study of the law and Police Regulations bearing on this topic that the Legislature as well as the Police authorities have taken more than ordinary precautions to prevent the possibility of planting incriminating articles in the possession of the accused. The object of cross-examining a witness to a search is therefore, to elicit points which will go to shew that the search was conducted in a way which would not exclude possibilities of planting. It is impossible to say or suggest a set of question which every lawyer would find useful for his purpose. A few questions given below will amply indicate the line to be adopted.

Q. You were a witness to the search, were you ?

A. Yes.

Q. You say these articles Ex : 1 to 7 were found in the house of accused Jatin Roy ?

A. Yes.

Q. Who sent for you ?—the S. I., I suppose.

A. Yes.

Q. Where was the S. I. of Police when you came ?

A. He was standing in front of the house of the accused with 2 constables.

Q. Who else was there besides the S. I. of Police and his constables ?

A. Bhabesh Ghosh, and Tarak Banerjee.

Q. Was the accused there too ?

A. No.

Q. Where was he ? In the house or any where else ?

A. He was sent for from a neighbour's house.

Q. Did you have any talk with the accused when he came ?

A. No.

Q. Did the S. I. of Police say anything to the accused when he came ?

A. Yes. He said he would search his house.

Q. What did the accused say to that proposal ? Did he object ?

A. No. He said that the S. I. was quite welcome to do that.

Q. What did you do after this ?

A. We got into the house of the accused and began to search the rooms.

Q. How many rooms are there in the house ?

A. Seven in all.

Q. Did any one stand outside when you got into the court yard ?

A. Yes, one constable was kept standing with another man named Madan.

Q. These men were standing near the Southern block of the house on the road side,—were not they ?

A. Yes.

Q. You found none of these articles in any of the rooms in the Northern block or in the Eastern ?

A. No.

Q. Were these articles found in the room on the road side block –I mean the Southern block ?

A. Yes.

Q. The room in which you found these articles has two windows on the road side—is not that so ?

A. Yes.

Q. How did you find these windows,—open or shut ?

A. They were shut.

Q. Were they bolted ?

A. I am not sure, possibly they were not.

Q. Who opened these windows ?

A. Constable Ramjan.

Q. Could you see the other constable and the man named Madan on the road when the windows were opened ?

A. Yes, they were very close to the window on the road.

Q. Were all these articles (Ex. 1-7) in a small tin box and found on the floor underneath a *charpai* ?

A. Yes.

Q. Supposing the window was open, I presume you could throw in the box on the floor ?

A. Yes ; that could be done

Q. By the way, were you asked to search any of the police man or Madan ?

A. No.

Q. Madan is a co-villager of yours, is it not so ?

A. Yes.

Q. What sort of a man is Madan ? Is he not an ex-convict ?

A. Yes ; he was convicted twice for theft.

Q. You said Madan was talking with the Police people—did you ?

A. Yes.

Q. You are the Headmaster of local school—Are not you ?

A. Yes.

Q. Did you any time settle a land dispute between Madan and the accused ?

A. Yes.

N. B. Try to ascertain, the position in life of the search witnesses and if they were picked up by the Police from distant places. Ascertain also if respectable men were available close to the house searched. Read the Law as to search and precautions necessary to be taken in Part I Chapter IX pp. 87-91.

CHAPTER VIII.

Cross-Examination in a Rioting Case.

Defence—In a case of rioting the defence may be ordinarily one of these :

(i) Legal defence. This means that the number of the accused actually taking part in the commission of the offence was less than 5.

(ii) That the common object was different from what is alleged or that there was no common object the accused taking this plea saying that he was an innocent passer-by or a mere sight seer.

(iii) The question of indentification.

(iv) Private defence.

The cross-examiner may get on the cross-examination on the following lines according to the circumstances of the case.

Q. Do you know accused Jogen ? How long have you been known to him ?

Q. Which of these accused entered the house of the complainant ? Q. When did you come ?

Q. You say you cannot answer this question as you came rather late. Where did you find accused Jogen ?

Q. He had no *lathi* or weapon in his hand. Do you admit this ?

Q. Was not accused Jogen proceeding from the north to the south along the Municipal Road ?

Q. Do you know if Jogen's house is on the same Municipal Road at a distance of about 200 yards to the north of the spot where you saw him ?

Q. Did you have any talk with Jogen ? Did you ask him why was he running towards the south ?

Q. Did he shout ? Did he, to your knowledge, do anything to hurt or molest any one of the complainant's party ?

Q. How long after the occurrence were you examined by the Police Officer ? Did you name Jogen as one of those who were actually among the rioters ?

Q. Did you go to the house of the complainant after the rioters left ? Did you tell him that Jogen was mounting guard and that he did not allow you to come to his help ?

Q. Were you not one of the people who accompanied the complainant to the Police Station ? Weren't you present when the F. I. R. was recorded ?

Q. Did you suggest at that time that Jogen was one of the culprits ?

Q. Is it not a fact that after the rioting took place you knocked Jogen down near the market on your way back from Thana ?

Q. Did he abuse you for your rashness as a cyclist ? Did he besides claim from you damage for breaking his wristwatch as a result of the knocking down ?

Q. Is it not a fact that you named Jogen as a rioter purely out of a spirit of revenge ?

Q. I put it to you that the story of Jogen mounting guard on the road is a pure invention.

Where the defence is that the accused was a mere sight-seer, or of mistaken identity questions like those as shown below may be asked.

Q. You never knew the accused before the occurrence. Is that so ?

Q. You were shocked and surprised when the accused Rahim and Dedar Bux suddenly rushed into your house with a good few people and started doing mischief to your properties ?

Q. You shouted at the top of your voice for help. Did you ?

Q. Did you find the accused with Rahim and Dedar Bux ?

Q. How long after that did accused Suleman come up ?

Q. Did you see him when he first entered your house gate ?

Q. Did he shout "what has happened"

Q. Did any one shout like that ?

Q. Is it a fact that this accused was beaten by your *Darwan ?*

Q. You saw this accused at the courtyard warding off blows of your *Darwan ?* Is it so ?

Q. Had you any quarrel with this accused any time ?

Q. Are you sure that your cry for help did not call in neighbours ?

Q. You say it is just possible that some people rushed in with a view to help you ; and you fix this accused as one of the assailants, because you found him passing *lathi* blows with your servant.

Q. Could you swear that your servant did not mistake him for one of the rioters and struck him a blow ?

Q. Could you further swear that the accused when he hit your *Darwan* did not do so in self-defence ?

When the defence is (iii) try to get the distance between the accused and the witness at the time of the occurrence and also the number of persons in the crowd intervening. Also try to ascertain if the crowd was a moving one and the position in which the accused stood when he was alleged to have been identified. Try to get if there was any hut or tree obstructing the view of the witness.

When the defence is (iv) try to ascertain if the complainant's party was aggressor and if the land where the riot took place was in possession of the accused. Try to show that the accused did not use greater force than that was necessary to protect himself from the attack. (Read Part III, Chapter IV, Pages 287—296, where the law regarding private defence has been fully discussed).

CHAPTER IX.

Cross-Examination of the Investigating Police Officer.

The Investigating Police Officer is nearly always a very important witness. From the receipt of the information till the submission of the charge-sheet, all important development of the case is within his knowledge. His diary will show by stages the discovery of material facts and evidence on which the Crown depends for the conviction of the prisoner.

Obviously it is of the highest importance to keep in view all the questions which should be put to the Investigating Officer.

The just thing that should attract the attention of the cross-examiner is the F. I. R. He should read it carefully to 'ascertain if the informant made out a definite case against any body. If the F I. R. is such as would not in any way make it possible to fix the guilt on any known individual, the field of investigation becomes definitely greater. The Investigating Officer has in that case to search for materials which may lead to the detection of the criminal. Every attempt should be made to ascertain by cross-examination as to what materials he had when he took up the enquiry and at what stages and how the remainder of the evidence became available. This requires skill and insight. The object of cross-examination is to find out if the investigation was honest and careful. So it must be kept in view that as the case proceeds and witnesses go on giving their version of the case or any part of it, the lawyer should ask himself repeatedly one or other of the following questions.

(a) Is the witness interested ? (This means that he has grudge against the accused or some gain to obtain from the Police.)

(b) At what stage of the investigation does he come ? (This question implies that the witness may just come in by the way to prove only a missing link in evidence. Such witnesses are nearly always chance witnesses or handy men of the party or Police

informer. It will be found as a matter of common experience that in the order of examination by the Investigating Officer this class of witnesses invariably come very late.)

(c) The possibility of better body of witnesses having seen or known about the fact in issue or relevant fact. (Question under this group will be chiefly directed to ascertain if the surroundings or locality was such as would make it highly probable that a better and larger body of witnesses had been excluded in favour of those actually examined in Court.)

(d) The Investigating Officer should be examined at some length when the identification of the accused was any part of the investigation. It frequently happens that a number of men are arrested on suspicion and brought to the thana. The Investigating Officer, either sends for the witnesses to the thana to ascertain if any of the suspects is the actual offender, or sends the suspects round the village in broad daylight to the house of the complainant. This makes the test identification in the jail held subsequently useless for the obvious reason that suspects have either been shewn to the witnesses at the thana or in the locality where the occurrence is alleged to have taken place. This fact may be denied by the Investigating Officer for obvious reasons To cross-examine him on this point, the lawyer should proceed very carefully. From the identifying witnesses try to elicit, if possible, answers favourable to the defence suggestion that the identification of the

prisoner on which the prosecution case depends, is really nothing that can be called honest.

(e) Where articles have been found on search, the Investigating Officer should be questioned very closely on the point. It frequently happens that the complainant gives a certain list of stolen properties in the F. I. R. or to the Investigating Officer. The offenders are apprehended much later, and various articles are found in their possession. The Police Officer has good reasons to suspect that the articles are stolen or must have been obtained by commission of dacoity. With this fundamental hypothesis, the work of investigation proceeds and every attempt is made, some time quite honestly, to connect the accused with any case of dacoity, robbery or theft reported to the neighbouring police stations. The articles go round from thana to thana, and possibly from complainant to complainant, when some one recognizes some or all of the articles to be his. In these cases the prosecution case stands or falls on establishing the ownership of the complainant and his satisfactory indentification of them (by marks etc.) before the Judge and the Jury. The cross-examining lawyer should in these cases attempt to elicit from the Investigating Officer the history of the find, its trace to the owner, and above all its satisfactory identification by the complainant.

CHAPTER X.

Cross-Examination in a case of disputed passage or pathway.

Q. Do you know the land in dispute? Can you give us an idea of its area and location?

Q. You say it is a passage running north to south between the houses of the complainant and the accused. Who uses the passage?

Q. The complainant's house has its entrance gate on the Municipal Road. Do you admit?

Q. To the west of the house of the complainant there is a passage about 6 feet wide which is used by his servants and *methors*. Is this a fact?

Q. The accused has his house on the east of the disputed road and his entrance gate is on the disputed passage.

Q. Is it a fact that ever since the accused constructed his house, he and his tenants had been using this passage for egress and ingress into his house?

Q. Were you a witness to the deed by which the accused purchased his land on which his house stands? Look at this signature and say if this is yours?

Q. You now remember having been present at the time of the execution of the deed. Will you now try and recollect if the complainant too was present at that time?

Q. Will you further stretch your recollection and say if you and the complainant helped the accused to fix up his boundaries?

Q. The complainant is a relation of yours by marriage. You married his sister's daughter—did you ?

Q. How often is it that you come to the complainant's house ? Would I be correct if I say that you come there very often ?

Q. Is it, besides, a fact that you owe your appointment to the complainant and are just at the present moment his subordinate in office ?

Q. Do you remember the position of the tank of the accused to the south of his house ? The tank is a pretty big one and is fenced on all sides, and has a flight of steps for access to its water on the north ?

Q. Do you admit that this disputed passage which the complainant claims as his own is the only approach to the tank ?

Q. Is it a fact that there was some unpleasantness between the complainant and the accused over polution of the water of the tank by complainant's maidservant by washing dirty linen ?

Q. Do you remember that shortly after the unpleasantness just referred to, the accused put up a gate at the *ghat* of the tank ?

Q. You know the accused is a man of business and stays most part of the year in the city.

Q. How long have you been seeing the house of the accused there ? Surely over 11 years ?

Q. Supposing the disputed passage is the complainant's exclusive property and not that of the

accused also, how would you get access to the tank and the house of the accused ?

Q. You say the passage is only three feet and not seven feet. Is not that so ?

Q. Is that the reason why the complainant closed up four feet of it ?

Q. You know the accused owns a car.

Q. Where is his garage situate ? Is it not at the northern extremity of the disputed passage ?

Q. How old is the garage ? Surely as old as the house ?

Q. When was the fencing on the disputed passage put up ?

Q. I presume the accused came down from Calcutta within a week of the putting up the fence. Is not that so ?

Q. Did not the accused ask the complainant to remove the fencing and is it not a fact that on his refusal to do so, he removed the fencing by force ?

Q. Did he not ask the complainant's servant to stand aloof ?

Q. Did he, besides, say that he would not stop ?

Q. Is it not a fact that the complainant ordered his servant to snatch away the spade from the accused and his son.

Q. Is it not a fact that the accused struck the complainant's servant and son when they attempted to attack him ?

———

CHAPTER XI.

CROSS-EXAMINATION IN A MURDER CASE.

Cross-Examination.—Cross-examination will differ according to the nature of the defence. If the defence is that the death was not homicidal but accidental or suicidal, questions should be asked very carefully. This defence will automatically suggest that the accused has been wrongly connected with the crime on suspicion or that he has been falsely implicated out of malicious motive. The case again may be one of mistaken identity.

Let us take a case where the only evidence to connect the accused with the crime is a dying declaration recorded by an Honorary Magistrate. Accused Dilmahamad, a work-man in a very large factory enclosed on all sides by a 15 feet high wall, is suspected of having murdered Ramjan Ahmad, a fellow worker inside the mill compound. The prosecution case is that at about 8-30 p.m., when the *mill-jamadar* was patrolling in the compound he heard a heavy moan from the corner of a godown. He followed the sound and found the man lying in a pool of blood. He raised an alarm when some other *darwans* came to the spot. The Police Officer was rang up and arrived on the spot immediately. The injured man who was removed to the hospital in a stretcher, some time after spoke and named accused Dilmahamad. The Police Officer at once sent for Mr. Dickenson—the nearest Hony. Magistrate and had the dying declaration of the man

recorded. At about break of day the man died. Now when the Mr. Dickenson proves the dying declaration and attending circumstances, he may be cross-examined as follows :—

Q. When was it that you came to the Hospital ?

Ans. About 11-30 p.m.

Q. How did you find the injured man then ?

Ans. He was in a semi-conscious state.

Q. What did you do when you saw the man in that condition ?

Ans. I kept waiting for some time when the doctor attending him explained to me the nature of the injury.

Q. Did the doctor say that the man had been completely disemboweled ?

Ans. Yes.

Q. Was the doctor very much optimistic about his life ?

Ans. No. He said the man would very likely die that night.

Q. How long after your arrival was the man roused ?

Ans. He was not roused. About 16 minutes after the man opened his eyes, and attempted to toss on the bed.

Q. As far as you could see, the injured man was in writhing pain ?

Ans. Yes. He made a peculiar sound of moaning which indicated that he was suffering from agonising pain.

Q. Did you ask him any question at this stage ?

Ans. Yes, I asked him as to who had injured him and when.

Q. What did he say? Did he reply?

Ans. No. He kept quiet.

Q. How often did you repeat the question when he spoke?

Ans. After I had repeated the question 10 or 12 times he opened his eyes and looked at me.

Q. Did he speak this time?

Ans. Yes.

Q. What did he say when he first spoke?

Ans. "I have been murdered."

Q. He did not mention any name until after some time. Is that so?

Ans. Yes. I had to ask him 5 or 6 times if he could name his assailant when he said "Dilmahamad."

Q. Did you ask the Inspector of Police and the doctor attending, if he had given out the same name before you came?

Ans. Yes, they said that the same name had been given at about 10 p.m.

Q. Will you kindly try and recollect the time when the reply was given?

Ans. 1 a.m.

Q. How long after this did you record the statement?

Ans. I record the questions and answers as soon as I got the answers.

Q. Am I correct that you could not get answer to either of these questions until about two hours of your arrival?

Ans. Yes.

Q. Did you ask him any suggestive questions ?

Ans. No. But the Police Officer put some questions in Hindi which I could not understand.

Q. Did the injured man reply ?

Ans. No. He once waved his hand possibly to indicate that he did not like being questioned.

Q. You are manager of the factory next to the Jute Mill in which the man was murdered ?

Ans. Yes.

Q. Can you tell us how many coolies work in your factory ?

Ans. I should put the figure somewhere near 1000.

Q. Could you give us some idea of the number of workmen working in the Jute Mill in which the man was murdered ?

Ans. I would not pretend to give you a figure. I should give it to be near 2000.

Q. Did you ask the injured man if he could give any more detail of his assailant, i. e., father's name, mill he worked in or place he stopped ?

Ans. Yes, but the man could give no reply to questions like these put by the S. I. of Police.

Q. Did you suggest that any one in the coolie quarters of the name of Dilmahamad should be brought ?

Ans. Yes; the S. I. of Police said that he had sent for men of that name and expected the constables back soon.

Q. Did you wait any more ?

Ans. Yes; in about half an hour about 2 a.m. two constables came back with four men.

Q. Did you ask any more question by now?

Ans. No. The S. I. said he would rouse the man and put before him those four men each of whom would call himself Dilmahamad.

Q. What did follow after that?

Ans. The injured man never opened his eyes any more. The doctor said he was fast sinking and it was useless to try him any more

Cross-Examination where the Defence is one of mistaken identity or accidental death.

Suppose the witness proves that he saw the deceased and the accused exchanging hot words in a field by the side of a river. He further proves that he heard the shout of the deceased while working in a neighbouring field and ran to the spot to find the deceased lying near a bridge, his face struck in mud. The time of occurrence is given 6 p.m. in October.

Q. You say you saw the accused exchanging hot words with the deceased. Where was it and when?

Ans. At about an hour before sunset in the paddy field on the other side of the river.

Q. Did you question either the accused or the deceased why they were quarrelling?

Ans. No. I passed them both and did not put any question as I feared that the accused might insult me.

Q. So you knew the accused and his temper very well from before the date of incident.

Ans. Yes; He is a man of very uncertain temper.

Q. Were you ever a victim of his bad temper ?

Ans. Yes. I once told him to mind his straying cattle and he said that it was none of my business to remind him of his slackness in that regard.

Q. You cite this answer as the only evidence of bad temper of the accused you experienced.

Ans. I should say not. He was once asked by the Headman of the village to clear out his dues to Sheoram, and he refused.

Q. You mean to say that this refusal was only indicative of his bad temper.

Ans. Yes.

Q. You all respect your Headman of the village, and never question his decision in matters referred to him for arbitration.

Ans. Yes.

Q. Your Headman then is a pretty influential man. Is not so ?

Ans. Yes.

Q. I am sure your Headman of the village got angry when the accused flatly refused to pay.

Ans. No. He kept quiet.

Q. True ; but what did he say to you all present there ?

Ans. "We should have nothing to do with him as he is a bad fellow."

Q. When did this incident take place ?

Ans. It was in the month of Aswin (Sept. & Oct.).

Q. How long before the murder of Kesab ?

Ans. About a month or so before that.

Q. Very good. How far away from the bridge where the deceased lay is your field ? Say 500 yards.

Ans. Not so far. It would be about 300 yards.

Q. You say you heard a scream. Did you look round to see who screamed ?

Ans. Not then. I was drawn from my work by the shout of a woman very shortly after. I at once ran to the spot to find the deceased in that position.

Q. Did you see the accused anywhere there ?

Ans. I saw a man like him running away.

Q. The woman whose shout drew you to the spot had arrived before you.

Ans. Yes.

Q. Did she say anything about any man hitting the deceased ?

Ans. No. She only said that her husband was "murdered."

Q. How far was the man whom you say you saw running away ?

Ans. 500 yards to the north.

Q. Did you run to apprehend him ?

Ans. No. I tried to raise the man from the mud.

Q. I presume a good many men and women collected there very soon.

Ans. Yes. Some 10 or 15 persons had assembled.

Q. Did you suggest to any one of these men to run that side to catch hold of the running man ?

Ans. No.

Q. Did the woman whose husband was injured say anything on her arrival home ?

Ans. She said that she saw the accused running away.

Q. How old was the deceased ?

Ans. 60 years of age.

Q. Did you find any blood on the spot ?

Ans. No.

Q. Did you find any injury on the forehead of the man ?

Ans. Yes. He bled from the nose when we removed him to his house.

Q. Did you find marks of injury round his ankles ?

Ans. Yes there was a mark of swelling.

Q. Did you ask the wife of the deceased why the man had come to the river side ?

Ans. His wife said that he had taken away a pair of bullocks to the river side to give them drink.

Q. Did you find the bullocks near the place ?

Ans. One of the bullocks was there in his field, the other could not be had till next morning in a neighbouring village straying in a field.

Similar questions may be put to other witnesses suggesting that possibly one of the bullocks proved unruly somehow or other and the deceased got entangled to the rope of the animal and was dragged into the water and fell on his face on the mud. Ask the Doctor, who held post-mortem examination on the body, questions suggesting a case of accidental death.

CHAPTER XII.

Cross-Examination in a rape case.

The accused in a rape case may have one of these pleas available to himself.—

(a) The falsity of the charge; (b) Consent when over 15. When the defence is that the prosecution story is a pure concoction, cross-examination has to be directed towards eliciting such points as will tend to show that the charge is a clever invention. In cases of this description much has to be gathered from the surrounding circumstances and facts. The motive too is a very important deciding factor. To take a defence of the nature, the lawyer must take a careful note of the social, moral and ethical standard of the deponent, her age and previous history. False rape cases generally owe their origin either to black mailing or to a desire to humiliate and ruin the accused out of spite. If the idea is one of black mailing or spiting the accused, questions on the following line may be profitably asked :—

Q. How old are you?

Ans. I am 22 years of age.

Q. Are you married?

Ans. No.

Q. Where do you stop in the city?

Ans. At 22 Lowdon Street.

Q. Who else lives with you?

Ans. I stay there with my mother.

Q. How old is she?

Ans. She is 40 years of age.

Q. Have you any brother or sister ?

Ans. Yes I have a sister.

Q. How old is she ?

Ans. She is 16 years of age.

Q. Is your father living ? If not, when did he die ?

Ans. No. He died when I was a child.

Q. Have you any recollection of your childhood to be able say what he was like ?

Ans. I have only a faint recollection.

Q. Who maintains you and your sister ?

Ans. My mother.

Q. Do you know how she maintains you ? Has she any properties or does she earn for herself ?

Ans. We have no properties. She is working as a house-keeper with Mr. S.

Q. How much is she getting a month ?

Ans. Rs. 50/- besides food.

Q. How much house rent are you paying ?

Ans. Rs. 25/- for 2 rooms and a kitchen.

Q. Who cooks for you ?

Ans. A cook.

Q. How much do you pay him ?

Ans. Rs. 10/- for month.

Q. Is your sister in school ?

Ans. Yes : she is in school.

Q. How much have you to spend for her ?

Ans. I cannot say. My mother knows that.

Q. Were you in school any time ?

Ans Yes : I read up to the IV Standard.

Q. Have you any idea how much you used to spend then ?

Ans. No, my mother knows.

Q. Do you know if you have to spend anything on your sister's education ?

Ans. Something surely. She is not certainly getting schooling free.

Q. Did you know the accused any time before the occurrence ?

Ans. Yes : he stops very close to our house.

Q. Did you know him by appearance or more intimately ?

Ans. I only knew him by face.

Q. Are you quite sure you are telling the truth when you say that you knew the accused only by appearance ?

Ans. Yes, I only heard his name from my friend Miss Dorothy.

Q. Did you any time go to the pictures with the accused ?

Ans. No.

Q. Did you go out with the accused on a journey any time ?

Ans. No.

Q. Did you dine together at Firpos' any time ?

Ans. No.

Q. Now stick to your answers and answer my questions as best as you may.

Q. I suppose you have a savings bank account with the Lloyds Bank Ltd., Chowringhee Branch ?

Ans. Yes.

Q. Would you look at these counterfoils of cheques and say if they were drawn in your favour and deposited in your account ?

Ans. Yes.

Q. Who is the drawer of these cheques ; Mr.—, the accused ?

Ans. Yes.

Q. Why did he give you these cheques ?

Ans. He borrowed some money from my mother.

Q. When has that ? Did he give you any pronote ?

Ans. I cannot say, possibly not.

Q. Did your mother pay by cheques or cash ?

Ans. I cannot say.

Q. Would you still say that the accused was known to you by face ?

(Witness will probably have no answer.)

Q. Why were the cheques drawn in your favour instead of your mother's.

Ans. My mother wanted it like that.

Q. Could you show any payment made to your mother by cheque ?

Ans. No.

Q. Now look at this photograph. Is this yours ?

Ans. Yes.

Q. Where was it taken and by whom ?

Ans. In the Botanical Gardens, by a friend of mine.

Q. Have you any copy of this photograph ?

Ans. No.

Q. Did you ever introduce this accused to that friend of yours who took this photo ?

Ans. No.

Q. How do you explain the possession of this photo and its negative plate with the accused ?

Ans. I cannot.

Q. Who pays your electric bills ?

Ans. We.

Q. Are these bills in your name and for your meter ?

Ans. Yes.

Q. How did the accused come to get these ?

Ans. I do not know.

Q. By the way, did this book ever belong to you ?

Ans. Yes.

Q. Whose initial is this on this book ; your surely ?

Ans. Yes.

Q. Now, will you look at the letter and say if this is yours ? Did you write to the accused like this ?

Ans. Yes.

Q. Now, will you turn to the Jury and say if the accused was on terms of very great intimacy with you ?

Ans. I should say so.

Q. Would you now answer a straight question and tell us if the case of rape is due to the refusal of the accused to marry you ?

Ans. No.

Q. Is it not a fact that the accused found you one day in a compromising position ?

Ans. No.

Q. He called you a whore and said he would never think of marrying you ?

Ans. No.

Q. I put it to you that you want either to blackmail him or force him to marry you and that you started this false case to take revenge at any event ?

Ans. No.

From the answers given above the defence will be in a position to argue with great force that the accused was on terms of intimacy and had an intercourse as a matter of mutual consent. Questions like these put to the defence witnesses will further strengthen the case. The complainant having asserted that she is a virgin, a few questions like this to the medical witness will settle affairs.

Q. When did you examine the complainant ?

Ans. ....On.........

Q. Did you find any evidence of violence on her person ?

Ans. No.

Q. Was there any evidence of laceration or recent rupture of the hymen ?

Ans. No.

Q. You think there was co-habitation without resistence ? Do you ?

Ans. Possibly so.

Q. Did you examine the accused ?

Ans. Yes.

Q. Is he a normally healthy man from the sex point of view ?

Ans. I should think so.

Q. Would you call the girl a virgin ?

Ans. I would very much hesitate.

(See the cross-examinations of four doctors in a case where the child-wife met her death after intercourse with her husband *Q. E.* v. *Hurree Maythee* 18 Cal. 49. *See also* Chapter XIII (F))

N. B.—If the prosecution denies consent—try to get an idea about the struggling capacity of the girl and try to get if the accused got any injuries caused by nails or teeth of the girl. The witness may be asked about injuries if any on the persons of both the accused and the girl.

CHAPTER XIII.

Cross-Examination of Medical Witnesses.

(A)

Cross-examination of a medical witness who held post-mortem examination on a dead body of a person supposed to have died of wounds or injuries caused :—

The doctor who held post-mortem examination will give evidence on a reference to his post-mortem report. He will practically repeat what he himself wrote in his report Suppose the witness is of opinion that death was caused by wounds or injuries inflicted by a sharp weapon. He may be asked the following questions :—

Q. 1 Did you examine the dead body of...yourself ? When and where ?

Q. 2 Did you get from the police the approximate time of death ?

Q. 3. Was the body in a highly decomposed condition ? If not please say how many hours after death the body was received by you ?

Q. 4. Did you ascertain from the internal examination—if the deceased was suffering from any chronic disease ? If so could the man die of that disease ?

Q. 5. What is your opinion ?—Could the man die of the external injuries examined by you ?

Q. 6. You say there were four injuries one near the right shoulder another on the abdomen and the remaining two on the leg.........was any one of those injuries fatal enough to cause death ?

Q. 7. Could the injuries collectively cause death to a healthy person ?

Q. 8. Is it not probable that death was accelerated on account of the internal disease—from which the man was suffering from before ?

N. B.—If the deceased is alleged to have made a dying declaration then the opinion of the doctor whether, after receiving such injuries the man could speak or not may be ascertained.

Q. 9. After receiving injuries on the abdomen was it possible for the deceased to speak anything ? If so how long after the injury you would expect the man to be unconscious ? (You can show the witness the weapon, by which according to the prosecution the injuries were caused.)

Q. 10. Please examine this weapon. It is an old rusty *dao*. Will you call it a sharp weapon ? Could the injuries be inflicted by this weapon ?

Q. 11. Did you notice any blood-stain on the weapon ?

Q. 12. Did you yourself examine chemically the alleged blood-stain ? (If the doctor himself did not chemically examine the supposed blood-stain—ask him about it.)

Q. Have you seen the chemical examiner's report ? (If your case be that the injuries were self-inflicted then ask.)

Q. Well is it not possible for the deceased to inflict all the injuries himself ?

Q. Could he cause injuries 1, 2 himself ?

Q. Will you kindly tell from the nature of the injuries the position of the assailant at the time of the attack ?

Q. Could not the injuries on the abdomen and legs be caused by falling upon some sharp instrument or substance ?

(B)

Cross-Examination of a medical witness in a case of supposed death by hanging :—

Q. Did you examine the body ? If so, did you notice any external marks of violence on the body ?

Q. Did you note those injuries in your post-mortem report. (After a person is murdered his dead body may be hung up. External marks of violence on the body if any might go to show that death had been caused by those injuries. In case of hanging saliva will be found running in a straight line down the chin and the chest. *See page* 754.)

Q. Did you find marks of saliva from the mouth ? If so describe the direction of the saliva mark noticed by you.

Q. Did the mark of chord completely encircle the neck ? (In case of hanging usually the mark of chord is oblique and non-continuous i. e., does not completely encircle the neck[1]).

Q. Is it true that in most cases of death by hanging the mark of chord is oblique and non-continuous ?

Q. What is your opinion about the cause of death ? Is it not a fact in case of death by hanging signs of asphyxia will be noticed at the time of the post-mortem examination ? Did you notice any such signs ?

Q. What was the conditions of the face and the eyes ? (In case of death by hanging the face will be found pale and eyes not unduly prominent.)

Q. Was there any rope round the neck at the time you examined the body ? Is the rope strong enough to support the weight of the body—if the body falls from a height of 4 to 5 feet ?

Q. Did you notice marks of swelling on the injured parts ?

(If injuries were caused during life swelling will be noticed.)

Q. Did you notice anything unnatural during Post-mortem examination ?

Q. Was the body a healthy one and free from disease ?

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1. See Lyon's Medical Jurisprudence 4th edition P. 163.

(C)

Cross-Examination of a medical witness in a case supposed drowning :—(After murder the dead body may be thrown into a tank or river—you are to remember this. In case of death by drowning water will be found in stomach and weeds and like substances may be found in the air-passages, or clenched in the hands *See pages 752—753.*)

Q. Did you examine the dead body of..............?

Q. Did you find any water inside the stomach ?

Q. Did you find any foreign substance in the air-passage ?

Q. Did you notice any mark of external violence on the body ?

Q. If so give an account ? Could death be caused by injuries found on the dead body ?

Q. What is your opinion about the cause of death ? Kindly give reasons for you answer :

Q. What time after death was the dead body examined by you ?

Q. There is evidence that the deceased was a swimmer. Could an ordinary swimmer meet with death in a small tank by drowning ?

Q. Did you notice the condition of the wearing cloth of the deceased ?

Q. If the cloth was not tightly worn could the deceased swim about 30 feet from the *ghat* of the tank ?

(D)

Cross-Examination of a medical witness in a case of suspected insanity :—(*Read Pages 740—743.*)

Q. For how many days was the accused under your supervision ?

Q. Did you keep any note of the result of your examination day by day ?

Q. Did you examine him at the same time every day or at different hours on different days ?

Q. Is it not a fact that an insane person may appear to be quite sane during the lucid intervals of insanity ?

Q. Did you ascertain if he had previous attack ?

Q. What is your opinion ? Is sanity of accused congenital or accidental ?

Q. Did you try to ascertain the family history of the accused person ?

Q. Are you aware that the father of the accused was an insane man ?

Q. Did you notice any symptom of insanity of the accused ?

Q. If so, had you any reason to suspect that the accused was feigning insanity ?

Q. Did you think that the accused will be able to follow the proceedings against him ?

Q. Is he in a fit state of mind to answer the charge against him ?

Q. If you think that the accused is developing symtoms of insanity—can you say if he began to develop his symptoms before or after the alleged occurrence ?

(E).

Cross-Examination of a medical witness who held a post-mortem examination in a supposed cattle poisoning case :—

In poisoning cattle Arsenic, Aconite, Nux-vomica and similar substances are used. The doctor who

held post-mortem examination may be asked in cross-examination (if the report be silent) as to how he collected the contents of the stomach and intestine and if he kept note about it.

Q. Did you take any portion of the liver and kidney for examination? Did you receive the contents from the Mofussil? If so, how many bottles were received by you? What is your opinion about the cause of death? Did you get Arsenic in your chemical examination? Did you get any report about the condition of the animal when the police first inspected the dead body? If not, did you ask for any such report from the Police? If the witness says that he got the report then the attention of the witness may be drawn to it and the witness may be asked about the external symptoms of Arsenic poisoning e.g., signs of struggle following violent abdominal pain, swelling of abdomen and foams on the mouth.

(F)

Cross-Examination of a medical witness in a rape case :—

Q. Did you examine the private parts of the prosecutrix? If so, how many days after the occurrence? Please state in detail the result of your examination and the reasons for your opinion that the girl was raped? Q. Did you examine closely the person of the girl? If so, did you notice any marks of injury? Q. Did you note those marks in your report? You have seen the accused and the girl and I believe that you will agree with me that the girl is a perfectly healthy one of cooly class.

Q. Does not the accused appear to be a lean person ? If the girl was not a consenting party would you not expect her to offer violent resistence to the accused ?

Q. Could she not use her fingernails and teeth in causing injury to the person of the accused ?

Q. Was it not possible for the girl to stand up and run away from the alleged place of occurrence ?

Q. Would you not expect in the case of struggle marks of violence on the persons of both the girl and the accused ?

Q. What is the age of the girl in your opinion ? State your reasons.

Q. Was the lower garments worn by the girl sent to you for chemical examination ? Did you notice any mark of semen on the garments sent to you ?

If the garment was sent to the chemical examiner then the doctor may be asked whether he has seen the chemical examiner's report. If the doctor himself examined the garments he may be asked about the results of the examination and the test applied by him.

PART VIII

MODELS OF PETITIONS

AND

AFFIDAVITS.

PART VIII

CHAPTER I.

MODELS OF PETITIONS.

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CHAPTER II.

MODELS OF PETITIONS.

Information Re :—Suspected Commission of Offence.

No. 1. An application to the Magistrate Under Sec. 45 Cr. P. C.

To

The Sub-Divisional Magistrate,
Alambazar, Dist. Chappra.

Sir,

I am owner and occupier of land situated in village Rampura within your Honour's jurisdiction and that it has come to my notice that 2 rival parties named below are making preparations in my village for committing a riot being armed with deadly weapons over possession of a plot of land on the south of the village market. I request the favour of your kindly

taking necessary steps to prevent occurrence of such a riot.

Schedule.
(Names of
2 rival
parties)

I have the honour to be,
Sir,
Your most obedient servant,
Sd/- Pach Ram Sing

No. 2. Petition for returning articles found on an accused person at the time of his arrest.
(Section 51 Cr. P. C.).

In the Court of......... ....Magistrate
of ....

Case No..........of..............Under Section ....
I. P. C. or Cr. P. C.

Complainant...............		*Accused*......................
Son of.......................	*vs.*	Son of.......................
Village.......................		Village.......................
Thana.......................		Thana.......................

In the matter of prayer for returning articles found on the person of the accused at the time of his arrest.

The humble petition of....................accused in the afore-said case.

Most Respetfully Sheweth :—

(1) That in connection with the afore-said case your petitioner was arrested on............by the Sub-Inspector of Police of.........................under a warrant which did not provide for taking of bail. and that his

person was searched and a sum of Rs. 25/- and a watch found on your petitioner's person were taken in custody of by the said Police Officer.

(2) That on............your Honour was pleased to acquit your petitioner after a regular trial in the afore-said case.

Your petitioner prays that an order may be passed directing the Police to return to your petitioner the articles found on his person at the time of the arrest.

And your petitioner, as in duty bound, shall ever pray.

No. 3. Claim petition. (Section 88 Cr. P. C.).

In the Court of the Sub-Divisional Magistrate of....................

Case No.......of.........Under Section.........Cr. P. C.

Complainant................		*Accused*
Son of..........................		Son of....
Village......................	*vs.*	Village..
Thana........................		Thana...

Claimant petitioner..........................

In the matter of an application for preferring claim to attached property.

The humble petition of the claimant petitioner

Most Respectfully Sheweth :—

(1) That in the afore-said case the immovable

property mentioned in Schedule A has been attached by your Honour on.........as the property of the absconding accused............... ....of this case.

(2) That the said property is the property of the claimant and he purchased the same from . .. .of........... ....by a registered *Kobala* dated ....and is in possession thereof from the time of his purchase by actually cultivating the land and growing crops thereon.

(3) Your petitioner's possession of the disputed land was recorded in the Record of-Rights finally published in the year 1932

Your petitioner prays that your Honour may be pleased to take evidence that may be adduced by your petitioner or on behalf of the Crown and to release the property from attachment.

And your petitioner, as in duty bound, shall ever pray.

Note.—Any person whose claim or objection has been disallowed in whole or in part may within a period of one year from the date of such order institute a Civil Suit to establish the right which he claims in respect of the property in dispute. The Civil Suit will be against the person at whose instance the property was attached and also the Crown. The claimant can claim *mesne* profit and damages[1]. If the Magistrate is satisfied about the claimant's right he would release the property from attachment.

1. *Secretary of State vs Jagat Mohini Dassi* 28 Cal. 540.

No. 4. Application under section 89 Cr. P. C. for restoration of attached property.

In the Court of the Sub-Divisional Magistrate,

Case No.........of.........Under Section.........I. P. C.

Complainant		*Accused*.................... ..
Son of........................		Son of........................
Village........................	*vs*	Village ....
Thana...		Thana..........................

In the matter of an application of accused (petitioner) for restoration of attached property.

The humble petition of accused petitioner.........

Most Respectfully Sheweth :—

(1) That in the afore-said case your petitioner's movable properties were attached under section 89 Cr. P. C. and that the said articles are in the custody of the Court.

(2) That your petitioner went to serve in the Deravili tea garden at Assam on................i. e., long before the false case against your petitioner was maliciously started by the opposite party complainant.

(3) That your petitioner was not aware of the Warrant of arrest and Proclamation or Attachment process issued by the Court.

(4) That the petitioner on his return from the tea garden on...........came to know about the attachment of his movable properties from.......

Your petitioner prays that your Honour may be pleased to take evidence that may be adduced and order restoration of the property to your petitioner

And your petitioner, as in duty bound, shall ever pray.

Note.—If the proclaimed person appears within the time specified in the proclamation and prays for releasing the property, the Court shall pass order releasing the property. The application under section 89 Cr P C. for restoration of attached property shall be made within two years from the date of the order[1]. The accused must appear and prove the allegations made by him to the satisfaction of the Magistrate.

No. 5. Petition for searching a particular place where stolen properties are supposed to have been kept (Section 98 Cr. P. C.).

In the Court of..............Magistrate
of.....................

Case No.........of...... ..Under Section 379 I. P. C.

Complainant		*Accused* ....
Son of.	*vs.*	Son of............. ....
Village........		Village........ ....
Thana.		Thana. ....

In the matter of search for stolen properties suspected to be in the possession of the accused or other person.

1. *Malasingh v. King Emp.*, 1[illegible] P. R. 6=17 Cr. L. J. 414.

The humble petition of ....
complainant in the above case,

Most Respectfully Sheweth :—

(1) The complainant started a case against the accused for theft of certain articles from his house and your Honour was pleased to issue a Warrant of arrest against the accused.

(2) The accused was a domestic servant of the complainant and taking advantage of the absence of the complainant and his wife on a holiday pleasure trip decamped with a box containing ornaments and valuable jewellery. The accused has not produced the articles so far nor could these be found at the place where he was arrested.

(3) Your petitioner has come to learn on an enquiry that the accused and his accomplice meet at night in a house of ill-fame belonging to............of village............and it is believed that a search of that house will lead to the recovery of some atleast of the many ornaments and jewelleries stolen by the accused.

Your petitioner, accordingly, prays that a search Warrant may be issued directing the local Police to search the afore-said house for the recovery of the stolen properties that may be found there.

And your petitioner, as in duty bound, shall ever pray.

N. B. The application should disclose the offence committed. A search warrant should be issued after examining the complainant and after taking cognizance of the case[1]. Police can also apply for search warrant during the investigation of a case. The search should be for specific articles stolen[2]

No. 6. Petition for restoration of an abducted woman and for search. (Section 552 Cr. P C.)

In the Court of the District Magistrate (Presidency Magistrate) of.................................

Case No...........of.............Under Section . ...I. P. C.

Complainant...............		*Accused*......................
Son of......................	*vs.*	Son of... .. . . . .
Village......................		Village........................
Thana.........................		Thana.. . ...

In the matter of restoration of an abducted woman.

The humble petition of.............complainant in the above case,

Most Respectfully Sheweth :—

(1) That the accused who was for some time a neighbour of your petitioner abducted your petitioner's legally married wife on.........Your petitioner informed the Police of his suspicion and then started this case on receipt of information from the witnesses that the accused was seen in company of your petitioner's wife some days after she had left your petitioner's house.

1. *Ajay Krishna Sarkar* vs. *S. G. Bose* 33 C. W. N. 369.
2. *Bisar Misser* vs. *Emp.* 4[illegible] Cal. 261 = 17 C. W. N. 1209.

(2) That your petitioner has come to learn on a subsequent enquiry that the accused took away your petitioner's wife to............village in the district of ....where he left her in charge of one of his relations named...........................

(3) Your petitioner has reason to believe that the information obtained by him is true and that a search Warrant promptly issued and executed will very likely lead to the discovery of your petitioner's abducted wife.

In the circumstances stated above, your petitioner prays that a warrant may be issued for searching the house of... ....in Village..............in the district of.........for finding out if your petitioner' wife Sm........... ....has really been kept confined there, and also for her recovery and restoration to the complainant, if found.

And your petitioner, as in duty bound, shall ever pray.

Note:—There must be a complaint before the above application can be made. The petitioner may pray that his abducted wife may be restored to him under section 552 Cr. P. C. The application can be made only to a District Magistrate or a Presidency Magistrate.

No. 7. Application for drawing up proceeding Under Section 110 Cr. P. C.

In the Court of the Sub-Divisional Magistrate
of.......................... .. ..

In the matter of an application for starting Proceeding u/s 110 Cr. P. C.

Petitioner.		*Opposite Party.*
Sk. Ibrahim of		Md Esak Ali
P.S.........Village...	*vs*	Village.........P.S.........
....Dist		.... .Dist..... ... ...

The humble petition of Sk Ibrahim petitioner

Most Respectfully Sheweth :—

(1) Your petitioner is an old resident of village ....within the jurisdiction of yours Honour's Court.

(2) Your petitioner was approached time and again by a good few of his co-villagers with complaints against the opposite party to the effect that he is a man of disreputable morals, and is a menace to the safety of women and property in the neighbouring villages.

(3) Your petitioner, at the outset, did not feel disposed to believe the allegations made from time to time against the opposite party : but during the recent months the wicked activities of the opposite party have increased so much that he has become a source of danger in the real sense to the locality.

(4) The opposite party came to live in the village about six months ago. Since his arrival, there have been frequent cases of house breaking by night and theft. These apart, during the last month there have been 2 cases of kidnapping strongly believed to be associated with the opposite party.

(5) The opposite party maintains a sort of a brothel where many unknown people are found to come often at nightfall and indulge in drunken revelry to the annoyance of all living close by.

(6) The opposite party, as far as could be ascer tained on an enquiry, is an old offender and is at present without any ostensible means of livelihood—a fact which lends countenance to the popular belief that either he is a habitual thief or habitually harbours thieves.

In the circumstances set out above your petitioner prays that your Honour may be graciously pleased to hold an enquiry and call upon the opposite party to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour.

And your petitioner, as in duty bound, shall ever pray.

Note :—For law on the subject read Part II, Chapter I, pp. 99 to 115.

No. 8. Application under section 122 Cr.P.C. for proving that the surety produced by the petitioner is a fit person.

In the Court of the Sub-Divisional Magistrate,
Deoghar.

Case No. 5 of 1936. U/S 110 Cr. P. C.

Crown *vs.* *Accused*...............

In the matter of an application for proving that the surety produced is a fit person.

The humble petition of the accused petitioner

Most Respectfully Sheweth :—

(1) That your petitioner was called upon, in the afore-said case, under section 118 Cr. P. C to execute a bond for Rs. 250/- with one surety.

(2) That your petitioner and his surety Mr.......... executed the bond as required but that on behalf of the Crown an objection has been taken that the said surety Mr. .....is not a fit person.

(3) That your petitioner is prepared to adduce evidence, to prove that Mr...... .....is a fit person to stand as a surety for your petitioner.

(4) That the said surety is a co-villager of your petitioner and owns 300 *bighas* of *Lakheraj* land and is a person of position and influence in the locality.

Your petitioner prays that Your Honour may be pleased to hold an enquiry under section 122 Cr. P. C., to satisfy yourself about the fitness of the said surety.

And your petitioner, as in duty bound, shall ever pray.

Note :—The Magistrate is required to give notice to the surety and the accused (or any other person) who produces the surety. The Magistrate will then record the substance of the evidence adduced. According to the Allahabad High Court surety should not be a person of a distant place; otherwise he may not be able to exercise proper control over the accused[1]. The Calcutta High Court held in an older case that it was sufficient if the surety was a man of substance[2]. But in a recent case, inability to exercise control over the accused was held to disqualify the surety[3]. The Magistrate may cause such enquiry to be held and a report to be made thereon by a Magistrate subordinate to him[4].

No. 9. Petition under Chapter X. Cr. P. C. for removal of public nuisance. (Section 133 Cr. P. C.).

In the Court of the District Magistrate

of........................

Case No........of..........Under Section 133 Cr. P. C.

Petitioner....................		*Opposite Party*............
Son of........................	*vs.*	Son of....................
Village....................		Village........................
Thana........................		Thana......................

In the matter of prayer for conditional order for removal of nuisance.

The humble petition of..................................

Most Respectfully Sheweth :—

(1) That the opposite party owns a tank known as *Dighitank* adjacent to the public way known as Middleton Row in the town of Farakkabad.

1. *Q. Emp.* v. *Rahim Bakhsh*, 20 All. 206=18 A. W. N. (1898) 21.
2. *Suresh* v. *Emp.* 3 C. L. J. 575.
3. *Asiraddi* v. *Emp.* 41 Cal. 764=A. I. R. 1914, Cal. 626.
4. See Sec. 122 Cr, P. C. (1)

(2) That the old fencing of the tank was damaged and removed about a month ago and no new fence has yet been set up by the opposite party

(3) That in course of the last 15 days three persons got injuries by falling into the unprotected tank while passing by the road after dusk—there being no arrangement for lighting the locality after sunset.

(4) That unless the said tank be properly fenced forthwith there is risk of an imminent danger to human lives.

Your petitioner prays that your Honour may be pleased to hold a local inspection to ascertain the truth of the allegations contained in the petition, and to pass a conditional order for immediate fencing of the tank ; and after issuing notice to the opposite party and hearing both the parties, be pleased to make the conditional order for immediate fencing of the aforesaid tank absolute.

And your petitioner, as in duty bound, shall ever pray.

Note :—An application may be made for removal of unlawful obstruction or nuisance from any river, way or channel used by the public, for stopping trade or occupation injurious to the public health, to pull down a building, to cut a tree or destroy a dangerous animal, etc., as mentioned in section 133 Cr. P. C. A Presidency

Magistrate cannot act under this section. The proceedings under section 133 Cr. P. C. are more of a civil nature. The section applies only where the obstruction or inconvenience is caused to the public.

Magistrates should pass written orders. The proceeding can be dropped on sufficient grounds[1]. A Civil Court cannot question the order passed by a Magistrate under this section[2]. The order passed, is served like a summon or by issue of proclamation. The person against whom an *ex parte* order is made may appear and show cause praying, for vacating the order or claiming Jury. If Jury is claimed, the Magistrate shall appoint Jury in terms of section 138 Cr P. C. The verdict of the majority of the Jurors is binding on the Magistrate. If existence of public right is denied, the Magistrate himself has to enquire into the matter under section 139(A) Cr. P. C. In this connection read the case of *Manipur Dey* v. *Bidhu Bhusan Sarkar.*[3] The question whether the claim set up by the opposite party is a *bonafide* one or not cannot be referred to the Jury for decision. The Jury can simply enquire and report whether the Magistrate's preliminary order is reasonable and proper.[4] If the Jury fail to return a verdict within proper time the Magistrate will make his order final. The Magistrate can invoke the aid of section 133 Cr. P. C. only in case of imminent danger or fear of injury of a serious nature.[5]

No. 10. Application under section 135 Cr. P. C. showing cause to order passed under section 133 Cr. P. C.

In the Court of........................Magistrate
of..............................

Case No.........of.........Under Section 133 Cr. P. C.

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1. *Issur Chunder Nath* v. *Kali Chunder Nath*, 8 Cal. 883=11 C. L. R. 235.
2. *Oojulmoyee Dossee* v. *Chundra Kumar Neogee*, 12 W. R. 18 (Full Bench.)
3. 42 Cal. 158=18 C. W. N. 1086.
4. *Kailash* v. *Ramlal*, 26 Cal. 869.
5. *Queen Emp.* v. *Brojendra*, 21 W. R. 86.

Petitioner......................		*Opposite Party*...........
Son of........................	*vs.*	Son of........................
Village........................		Village........................
Thana........................		Thana........................

In the matter of showing cause under section 135 Cr. P. C.

The humble petition of............ ..opposite party Most Respectfully Sheweth :—

(1) That in the above case an *ex-parte* conditional order has been made by your Honour on...... ..under sec. 133 Cr.P C directing the opposite party to remove the wall constructed by him on a path way Z to the south of his house and that this order was passed on the application of the petitioner...........who is a co-sharer of the oppsite party.

(2) That the opposite party will be put to much inconvenience and the privacy of his house will be exposed if the opposite party has to remove the wall.

(3) That the opposite party claims private right of way on the land Z on which he built a small wall.

(4) That the petitioner .. ..out of malice alleged that the pathway Z is lawfully used by the public.

Schedule
Rough sketch of the locality showing pathway Z.

The opposite party prays that your Honour may be pleased to enquire as to the *bonafide* nature of the claim put forward by the opposite party and discharge the conditional order dated.........which was

served on the opposite party on..................

And the opposite party, as in duty bound, shall ever pray.

Note :—The Magistrate himself is to try the *bonafide* nature of the claim put forward by the opposite party. He cannot refer the matter to the Jury before deciding this question. The Jury has no right to decide the question whether the public has right of way on the land[1]. The opposite party cannot pray for a Jury and at the same time show cause claiming *bonafide right*[2]. If he claims *bonafide right* he can not ask for appointment of a Jury.

No. 10A. Petition under section 135 Cr. P. C. claiming appointment of Jury.

In the Court of..........................Magistrate of..........................

Case No.........of.........Under Section 133 Cr. P. C.

Petitioner....		*Opposite Party*............
Son of........................		Son of...................... ..
Village........................	*vs.*	Village........................
Thana........................		Thana... ....

In the matter of petition for appointment of a Jury under section 135 Cr. P. C.

The humble petition of..........opposite party........

Most Respectfully Sheweth :—

(i) That an *ex-parte* conditional order has been

1. *Kailash* vs. *Ramlal* 26 Cal. 869.
2. *In the matter of Kishorilal*, v. *E.* 13 C. W. N. 367.

made by your Honour under section 133 Cr. P. C., directing the opposite party to remove the temporary mat fencing alleged to have been constructed by him on a public pathway to the south of his house and that the order was passed at the instance of ....petitioner who is a co-sharer of the opposite party.

(2) That the old mat fencing is in existence by the side of the public way on your petitioner's land for much over 20 years and that he has simply repaired it recently.

(3) That the public pathway was not obstructed in any way and that there was no valid ground for praying for a conditional order by the petitioner.

The opposite party prays that your Honour may be pleased to appoint a Jury to report whether there is any real obstruction to the public pathway as alleged by the petitioner.

And the opposite party, as in duty bound, shall ever pray.

Note :—Vide note to the previous application. If there was any alleged nuisance involving danger to the public health the opposite party cannot claim any prescriptive right to continue it. A Magistrate is bound to accept the verdict of the Jury[1].

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1. *Queen Empress* v. *Pokolee Mullick* 12 W. R. 28.

No. 11. Petition under Chapter XI Cr. P. C. for immediate order in cases of apprehended danger. (Section 144 Cr. P. C.).

In the Court of the District Magistrate of......................

Petitioner		*Opposite Party* (1).
(1) Son of	*vs.*	Son of ....
Village		Village ....
Thana		Thana ....
(2) to (6) (give descriptions).		(2) to (6) (give descriptions).

In the matter of petition for prohibiting burials in the interest of public health.

The humble petition of......... and five others (here give names),

Most Respectfully Sheweth :—

(1) That the opposite party and others (give names) have quite recently begun to use the land by the side of the New Market, Allahabad, as a burial ground to the great inconvenience of the inhabitants of the locality.

(2) That on sanitary ground an order should be forthwith promulgated for stopping burial in the afore-said plot of land.

(3) That cholera has broken out in an epidemic form in the locality and jackel and other animals are creating havoc on the dead bodies which are buried just below the ground level and this has become a source of positive nuisance and danger to the public health.

Your petitioners pray that your Honour may be pleased in the interest of public health and safety to pass an immediate order prohibiting the people of the locality from using the land as a burial ground for such a period as you think fit.

And your petitioners, as in duty bound, shall ever pray.

(This petition is based on the case re:—*Khaja Bhoy* 2 Weir 64).

Note:—In case of emergency an *ex parte* order can be passed[1]. But it is usual to issue notice to the opposite party and to consider what they have got to say and then to pass an order on the application. An order passed may be subsequently modified or rescinded by the Magistrate. No order remains in force for more than two-months.

The order should not be of a sweeping nature[2]. A Magistrate under this section can well direct a rival owner of a *hat* to alter the day of holding the *hat*, if without such an order there be likelihood of a breach of the peace owing to the interference of the rival *hat-holder*[3]. A Magistrate cannot pass an order against the terms of a Civil Court decree[4]. A person against whom an order is passed may go to Civil Court for relief.

1. *Joyanti Kumar Mukherjee* v. *J. B. Middleton* 27 Cal. 785=4 C. W. N. 562.
2. In re *Ram Chandra* 6 W. R. 40.
3. *Abbas Ali* v. *Illim Meah* 14 W. R. 46. *Shyamananda* v. *Emp.* 31 Cal. 990=8 C. W. N. 781=1 Cr. L. J. 778.
4. In re *Rahmatullah* 17 All. 485. (F. B.)=15 A.W.N. (1895) 96.

No. 12. Re :—Proceedings under Section 145 Cr. P. C.

Application for drawing of proceedings u/s 145 Cr. P. C.

In the Court of...........Under Section 145 Cr. P. C.

1st party		*2nd party*
(1)............................	*vs.*	(1)............................
		(2)............................
		(3)............................

In the matter of an application for drawing up proceedings u/s 145 Cr. P. C. between the 1st and 2nd party.

The humble petition of 1st party,

Most Respectfully Sheweth :—

(1) That the 1st party is in exclusive possession of the market known as Nimta Bazar, situate in village Nimta within the local jurisdiction of this Court. (Specifically described in the shedule annexed herewith) for a period of over 20 years, by collecting the entire toll and rent from stall-holders and shopkeepers and that the 2nd party alleging that they purchased the site of the said market, from one Nirmal Chandra Bose of Sitarampur about a month ago, is trying to disturb the 1st party's possession of the market by forcibly collecting rent and tolls from some of the stall-holders and shop-keepers.

(2) That in consequence of the unlawful interference of the 2nd party with the 1st party's peaceful possession of the market, a dispute likely to cause a breach of the peace has become eminent.

(3) That the 1st party informed the local Sub-Inspector of Police, a week ago, about the matter, but the Sub-Inspector has not yet done anything to prevent the likelihood of a breach of the peace.

(4) That the 1st party is hereby bringing the matter to your Honour's notice.

(5) That the 1st party is filing along with this petition his title deeds and collection paper to show his *bonafide* exclusive possession of the market from a long time.

Your petitioner prays that your Honour on a perusal of the documentary evidence and after examination of the first party and his witnesses who are present in the Court be pleased to draw up a proceeding U/S 145 Cr. P. C. between the 1st and the second parties and fix a date for appearance of both parties, and both parties may be directed to file their written statements in respect to their respective claims.

And your petitioner, as in duty bound, shall ever pray.

Note.—On the date fixed the Magistrate will accept written statements filed by the parties. He will also take evidence and decide which of the parties was in possession of the subject matter of dispute on the date the proceeding was drawn up. If the Magistrate find that no dispute exists and that there is no likelihood of a breach of the peace he will drop the proceeding. The party who will be found in possession will be entitled to retain possession of the property until he is legally evicted by an order of Civil Court. The Magistrate can assume jurisdiction U/S 145 Cr. P. C. only where there is a likelihood of a

breach of the peace[1]. The property should be distinctly specified,—so that both parties may clearly understand the subject matter of dispute. At the outset the Magistrate is bound to make an order U/S 145, Cr. P. C. (i). otherwise subsequent proceedings will be bad in law[2]. The order should state the ground on which the Magistrate is satisfied. The parties should be clearly named in the order.

The Magistrate will enquire about actual possession only. No proceeding U/S 145 Cr. P. C. can be drawn between co-sharers who are in joint possession of a disputed property. Notices of the preliminary order are served upon the parties like summons. The procedure of a summons case is followed in proceedings U/S 145 Cr. P. C. The Magistrate cannot decide the question of title to the propety, as he is concerned with the question of possession only. The Magistrate may make a local enquiry, if he thinks fit to do so, but that does not authorise him to decide the case without going into evidence[3].

No. 13. Petition of complaint filed in a Mofussil Court.

(Section 200 Cr. P. C.)

In the Court of the Sadar Sub-Divisional Officer,....

'omplainant................	*Accused*........................
adunath Ghose	1..................................
'ccupation	2..................................
illage........................	3 to 6..........................
hana	Village,........................
istrict........................	Thana..........................

1. *Gobinda Chundra Maitra* v. *Abdul Syed*, 6 Cal. 835 & *Ram Chandra Das* v. *Monohur Roy*, 21 Cal. 29.
2. *Banwari Lal Mukherjee* v. *Hriday Chakravarty*, 32 Cal. 552 = 2 Cr. L. J. 347. = 1 C. L. J. 432.
3. *Lal Behari* v. *Bejoy*, 10 C. W. N. 181.

Sections of I. P. C. or Cr. P. C. applicable.

Date of occurrence.
22. 9. 37.

447, 426, 143 — I. P. C.

The Complainant begs to state :—

(1) That there was a civil case between the complainant and accused No. 1 regarding possession of a plot of homestead land being suit No.... .. of... .. ..in the Court of the Munsif of...... .. . in the District of.......... ..., and that the said case was decided in favour of your petitioner on...... ..

(2) that thereafter accused No. 1 held out a threat to the complainant by saying that he would take revenge.

(3) That on . .. ..accused No. 1, his relations and servants, the accused Nos. 2 to 6, with the common object of committing mischief to the complainant, entered on the complainant's land mentioned in the Schedule appended hereto with 8 to 10 heads of cattle and mercilessly began to damage the paddy crop grown by the complainant.

(4) That the complainant coming to know about the incident hastened to the land and entreated the accused party not to commit further mischief. The accused party refused to pay any heed to the entreaties of the complainant and allowed their cattle to damage the entire crop which was almost ready for sickle.

(5) The complainant forthwith lodged an information about the occurrence to the (name of thana) Thana but the S. I. of Police in-charge of the thana referred the complainant to the Court.

(6) That the accused party were members of an unlawful assembly with the common object of committing mischief to the camplainant's paddy and that they also committed criminal trespass and mischief by entering on the complainant's land with the afore-said object and by damaging the crop. The accused were, therefore, guilty under sections 447, 426 and 143 I. P. C.

Your petitioner prays that your Honour may be pleased to summon the accused and after taking evidence, be pleased to convict them under the sections mentioned above or under such other section or sections as the offence committed by the accused may come.

Schedule of land.

And your petitioner, as in duty bound, shall ever pray.

....

Date.............. *Signature of complainant.*

Note.—To constitute unlawful assembly there must be a common object as mentioned in section 141 I. P. C. To constitute Criminal Trespass (section 441 I.P.C.) the entry must be with a view to commit an offence, to intimidate, insult or annoy any person. The intention

to intimidate, insult or annoy may be against the person in actual possession or a person in constructive possession of the land[1]. *Vide (pages 408—410).* To constitute an offence of mischief (section 425 I.P.C) there must be an intention to cause wrongful loss or damage or knowledge that wrongful loss or damage may be caused either to the public or to any person. If a person *bonafide* does injury to a property which he believes to be his own there is no intention to cause wrongful loss or damage to any person, so no offence is committed under section 426 I.P.C.[2] *(See pages 406—407).*

No. 14 Petition of complainant filed in the Court of the Presidency magistrate.

In the Court of the Presidency Magistrate,
Bankshall Street, Calcutta.

Complainant ....Ramcharan Sirkar
vs. (Give descriptions.)
Accused............ ....Hari Nath Dey
(Give descriptions).

Case U/S—503 I. P. C.

The humble petition of the Complainant above mentioned.

Most Respectfully Sheweth :—

(1) That the complainant has a rice business in the Bazar and his *Arat* is located at No. 30, Madan Row within the jurisdiction of this Court.

(2) That the accused served as a Cashier under the complainant for about one year.

1. Maung Kado (1895) 1 U. B. R. (1892-1894) pp. 264.
2. *Empress of India* v. *Budh Sing* 2 All. 101, 103.
Shakur Mahomed v. *Chunder Mohan Sha* 21 W. R. 38.

(3) That on 3-1-37 the complinant checked the cash-book kept by the accused and verified the cash when it was found that the cash was short by Rs. 307/- only.

(4) That the complainant asked the accused to explain his conduct and wanted him to make up. the deficit at once.

(5) That the accused got enraged as his fraudulents act came to light and told the complainant in the presence of many customers and other officers of the firm, whose names are mentioned in the Schedule that "you are a dishonest man and that you never supply rice according to samples and always give short weight."

(6) That above imputations were made by the accused intending thereby to harm the reputation of the complainant as a rice dealer.

(7) That by the above imputation the complainant's reputation has been lowered in the estimation of his customers and other people.

In the circumstances stated above your petitioner prays that your Honour may be pleased to summon the accused to meet a charge of defamation punishable under sec. 503 I. P. C.

And your petitioner, as in duty bound, shall ever pray.

Schedule—Names of Witnesses.

Note. Publication of an alleged defamatory statement must be proved. *(See notes under sec. 500 I. P. C. given in Part III. Pages 425—433.)*

No. 15. Petition by an accused surrendering in Court.

In the Court of..................Magistrate of............

Case No...........of...........Under Section............

I. P. C. or Cr. P. C.

Complainant		*Accused* ....
Son of.................	*vs.*	Son of..... ....
Village...................		Village ....
Thana....................		Thana.................

In the matter of petition of surrender of..................in Court.

The humble petition of..............accused in the above case,

Most Respectfully Sheweth :—

(1) That an warrant was issued by your Honour on.............for arresting your petitioner as an accused in the afore-said cese.

(2) That the said warrant has not yet been executed and your petitioner has come to know about it from one...............a co-villager of your petitioner.

(3) That summons in the afore-said case was not personally served upon your petitioner as at the time of the alleged service your petitioner was away in village............at a distance of 10 miles from the petitioner's house to attend to his daughter who had been suddenly attacked with cholera.

(4) That the complainant maliciously represented to your Honour that your petitioner was absconding to avoid service of summons.

(5) That your petitioner surrenders himself in Court to-day and prays that he may be released on proper bail and that the warrant of arrest issued against him may be recalled.

And your petitioner, as in duty bound, shall ever pray.

Note :—The warrant requires to be signed and sealed and it remains in force till cancelled.

No. 16. Statement of accused. (Section 342 Cr. P. C.).

In the Court of the Sessions Judge
of..............................

Case No...............of...............Under Section 302 I. P. C.

Crown. *vs.* *Accused*.....................
Son of.......... ....
Village............. ....
Thana......................

Statement of the accused.

(1) That the accused is perfectly innocent of the charge framed against him.

(2) That the accused was not present in the rioting where the alleged murder is said to have taken place.

(3) That the accused out of curiosity came to the spot about half an hour after the occurrence and was falsely implicated by the complainant with whom he had dispute regarding possession of a plot of paddy land.

Signature of the accused.

Note.—Under section 342 a Magistrate or a Judge may at any stage examine the accused to explain any circumstances appearing in evidence against the accused. The Court is bound to examine the accused before he is called on to enter his defence. There is difference of opinion as to whether Written Statements by the accused may be accepted The Calcutta High Court says that such statements may be accepted but that it does not dispense with the examination of the accused by the Court[1] The Bombay High Court, on the other hand, holds that the accused as a matter of right cannot put in a written statement[2]

No 18. Petition for summoning witnesses in a summons case (Sections 244 and 68 Cr. P C)

In the Court of the Sub-Divisional Magistrate of.......... ....

Case No .. .. .of .. .. ..Under Section . . .. .. I P. C.

Complainant		*Accused* ....
Son of.........	*vs*	Son of . . ..
Village		Village ... .
Thana............		Thana...... ....

In the matter of the petition of the accused for summoning witnesses.

The humble petition of.............. .....accused in the above case,

Most Respectfully Sheweth —

That for proving the defence case it is necessary for your petitioner to summon the witnesses men-

1. *Amritalal Hazra* v. *Emp.* 42 Cal. 957 = A I R. 1916 Cal 188.
2. *Emp.* v. *C. E. King* 53 Bom 479 = A I.R. 1929 Bom. 296

tioned below and to call for documents mentioned against the names of witnesses Nos. 2, 4, and 5.

Your petitioner prays that your Honour may be pleased to issue summons to those witnesses to appear and depose for the accused in the above case and to direct witnesses Nos. 2, 4, and 5 to produce documents called for from them as shown against their respective names.

List of Witnesses.

1. Sheikh Habibulla of village Rampur Thana Joypur.

2.	Name and Description.	This witness is to produce the mortgage bond executed by the accused on.............in favour of the witness.
3.	Do.	....
4.	Do.	This witness is required to produce the *Kobala* executed by.....in favour of his father on....................................
5.	Do.	This witness is to produce his account book of the year 1935 showing the ornaments prepa-

red by the witness and the payments made by the accused.

And your petitioner, as in duty bound, shall ever pray.

Note —The Magistrate has discretion as to whether he would summon all the witnesses or not The Magistrate may before summoning any witness require that his reasonable expenses in attending the Court be deposited in Court (Section 244 para 3) If the costs are not paid the Magistrate may proceed to try the case on the evidence before him without issuing summons[1]

No. 18 Petition for summoning witness in a warrant case (Sections 252 & 68 Cr P C)

In the Court of the Sub-Divisional Magistrate
of ... .

Case No. .. .. ..of......... .Under Section.........I P. C.

Complainant...		*Accused*. .. . ...
Son of.........	*vs*	Son of . . ..
Village		Village. ....
Thana		Thana.. ....

In the matter of petition by the complainant for summoning witnesses.

The humble petition of .. ..complainant in the above case,

Most Respectfully Sheweth :—

(1) That your petitioner has examined those witnesses whom he could produce without getting any summons from the Court.

(2) That it is necessary to examine other witnesses named below to prove other facts connected

1. *Korapulu* v. *Monappa* 5 Mad. 160=2 weir 305.

with the case and that those witnesses will not attend unless they are properly summoned.

Your petitioner prays that the Court may be pleased to issue summons upon the witnesses named bolow, to depose for the complainant in this case.

List of Witnesses.

Names...............*Place of residence*...........*Thana*

1...

2...

3...

4...

And your petitioner, as in duty bound, shall ever pray.

Note :—A Magistrate has to exercise his discretion in summoning witnesses (Section 252 Cl. 2). He may refuse to summon particular persons[1]. Under Section 244 Cl. 3 Cr. P. C. in a *Summons Case* the Magistrate may ask the party to deposit costs of the witnesses to attend the Court but in a *Warrant Case* the Magistrate has no such powers. A Magistrate cannot dismiss a warrant case for non-payment of process fee[2].

No. 19. Petition for issuing a Warrant of Arrest against a witness. (Section 75 Cr. P. C.).

In the Court of the Sub-Divisional Magistrate of..................

Case No.........of...........Under Section..........I. P. C. or Cr. P. C.

1. *Bridhichand* v. *Lakshmi chand* 8 N.L.R. 65=13 Cr. L. J. 554.
2. *Palannagari Pitchivadu* 2 Weir 323.

Complainant.		*Accused*
Son of.....		Son of. ..
Village...... .	*vs.*	Village..
Thana..........		Thana ...

In the matter of petition of the accused for issuing a Warrant of Arrest against a witness.

The humble petition of..................accused in the above case,

Most Respectfully Sheweth :—

(1) That summons was issued on Fulchand Bera of...........thana .. ..to appear and depose before your Honour on...... ..as a witness for the petitioner in this case.

(2) That the summons upon the said witness was personally served and that affidavits proving the personal service have heen filed by the serving officer and the identifier.

(3) That the said witness is a material witness for the defence as he is an attesting witness to the *Kobala* in respect of the disputed land executed by...... ....of.................in favour of the father of the accused on............

(4) That your petitioner verily believes that the said witness who is a relation of the complainant will not appear unless brought under arrest.

Your petitioner prays that your Honour may be pleased to issue a warrant for bringing the witness to this Court under arrest for giving evidence in this case.

And your petitioner, as in duty bound, shall ever pray.

Note :—The Magistrate cannot issue a warrant at the outset. But he can do so when summon is disobeyed[1]. No process fee is required to be paid in a warrant case[2].

No. 20. Petition for attachment of property of a witness.

(Section 88 Cr. P. C.).

In the Court of....................Magitrate
of.................

Case No. 23 of 1932 Uuder Section
....................I. P. C. or Cr. P. C.

Complainant		*Accused*
Son of		Son of
Village	*vs.*	Village
Thana		Thana

In the matter of an application for attachment of property of a witness evading the process of Court.

The humble petition of......... complainant in the above case,

Most Respectfully Sheweth :—

1. That the petitioner summoned X as a witness in the above case and the summons was served on him personally by a peon of this Court on.........

2. That the petitioner has sworn an affidavit about the personal service of the summons.

1. *Kala Singh* v. *King Emp.* 1907 P. W. R. 22.
Bhomar v. *Digambar* 6 C. W. N. 548.

2. *Bridhichand* v. *Lakshmichand* 13 Cr. L. J. 554=8 N. L. R. 65.

3. That warrant was issued against the witness for his arrest but that the witness could not be arrested as on getting scent of the order, he keept himself concealed ; that a proclamation U/S 87 Cr. P. C. was also issued against the witness.

4. That the witness X is a material witness in this case.

5. That the said witness has left the village to avoid attendance in Court.

6. That it is necessary to attach the property of the witness to compel his attendance in Court.

Your petitioner, accordingly prays that the properties belonging to the afore-said witness details whereof are given in the schedule may be attached.

And your petitioner, as in duty bound, shall ever pray.

Schedule.

Note.—An application may also be made for the issue of a proclamation under section 87 Cr. P. C. Section 87 read with section 88 applies in the case of a witness also.

No. 21. Petition for examination of a witness on commission under Section 503 Cr. P. C.

In the Court of the District Magistrate, Hooghly.

Case No. 1916 of 1923

Crown *vs.* *Accused...............*

In the matter of the petition for examination of a witness on commission.

The humble petition of the accused petitioner,
Most Respectfully Sheweth :—

(1) That in the above case Hemkumari Devi of Nadia is a material witness for the defence in as much as she will prove............(Here state what material fact she will prove.)

(2) That the examination of the said witness for defence is absolutely necessary for the ends of the justice.

(3) That the said witness is at present residing with her son at Delhi about 700 miles away from this Court. Besides she is an old lady of 75, suffering from gout and confined to bed.

(4) That it will take a long time before the said witness may be in a fit condition to undergo the journey from Delhi to Hooghly. Besides, the expenses of bringing her from Delhi to Hooghly will be prohibitive and it will cause much inconvenience and hardship both to the witness and to the accused.

(5) That in the afore-said circumstances your Honour may be pleased to issue a commission to the District Magistrate, Delhi, or to any Magistrate of first class power within the local limits of whose jurisdiction the witness resides, for her examination.

(6) That your petitioner is willing to deposit the necessary costs for issuing the commission.

Name and address of the witness.

And your petitioner, as in the duty bound, shall ever pray.

Note.—It is a matter of discretion with the Court to issue a commission under section 503 Cr. P. C. The procedure of examining a witness on commission is rarely followed except in cases of extreme hardship, delay, expenses and inconvenience. A Presidency Magistrate, a District Magistrate, a Court of sessions or a High Court may issue a commission[1]. Subordinate Magistrates cannot issue a commission under section 503 Cr. P. C. They are required to submit the application for examination of a witness on commission to the District Magistrate for necessary orders[2]. Parties are required to file interrogatories and cross-interrogatories for examination and cross examination of the witness. Parties if they so like can appear before the commissioner and examine and cross-examine the witness.

No. 22. Petition when a relevant question is disallowed by a Court.

In the Court of.........................Magistrate
of.........................

Case No..........of............Under Section......I. P. C.
or Cr. P. C.

Crown	*vs.*	*Accused*	....
		Son of	....
		Village	....
		Thana	....

In the matter of an application for recording of questions and answer disallowed.

The humble petition of..................accused in the above case,

1. *Farid Un[illegible]ssa*, 5 All. 92.=2 A. W. N. (1882). 184.
2. Vide section 506, Cr. P. C.

Most Respectfully Sheweth :—

(1) Your petitioner's Advocate put the following questions to P. W. 2 which your Honour was pleased to disallow :—

Questions :

(A)...............

(B)...............

(2) That your petitioner believes that those questions are very material for the defence and that the contention of the defence Advocate regarding the admissibility and relevancy of the questions have been improperly overruled.

(3) Your petitioner will be very seriously prejudiced if his Advocate is not permitted to put those questions to the witness and if the questions and the answers that may be given by the witness are not recorded.

Your petitioner, accordingly prays that before the witness is discharged your Honour may be pleased to reconsider your decision regarding the relevancy of the questions, and permit your petitioner's Advocate to put those questions to the witness.

And your petitioner, as in duty bound, shall ever pray.

N. B.—Such a petition may be filed where absolutely necessary. If the question be not very material it is better not to disturb the Court.

No. 28. Petition objecting to the admissibility of a document at the time of trial.

In the Court of ....Magistrate of.................
Case No. ....of............Under Section... .....I. P. C.
or Cr. P. C.

Complainant.........		*Accused.* ....
Son of.......................	*vs.*	Son of............ ....
Village...............		Village......................
Thana.		Thana......................

In the matter of an application objecting to the admissibility of a document in evidence.

The humble petition of accused... ....
Most Respectfully Sheweth :—

(1) That your petitioner's Advocate objected to the taking in evidence a letter alleged to have been written by a third party to witness No. 3 of the complainant regarding your petitioner's private dealings with persons other than those concerned in the trial.

(2) That the said letter has no bearing or relevancy for proving the fact in issue or any other relevant fact material to the enquiry.

(3) That the only possible effect of taking in evidence of the afore-said letter is to make unnecessary reflection on the character of your petitioner.

(4) That the admission of such a document is directly in contravention of the provision of section 54 of the Evidence Act.

Your petitioner, accordingly, prays that the letter referred to in this petition and sought to be exhibited by the prosecution, may not be taken in evidence (or if taken in evidence be expunged).

And your petitioner, as in duty bound, shall ever pray.

N. B.—If objection is not taken at the time the document is admitted in evidence, the other side may subsequently say that as the document was admitted without any objection at the trial Court, it should not be expunged in the appellate stage.

No. 24. Petition for local inspection in a proceeding under Section 145 Cr. P. C. read with sec. 539 (B) Cr. P. C.

In the Court of......................Etc.

1st party *vs.* *2nd party*

In the matter of petition for local inspection by the Court.

The first party petitioner begs to state that for a proper appreciation of the evidence adduced in this case and for understanding the location of the different plots of land mentioned in the documents, Ex. 1, 2 & 3, your Honour may be graciously pleased to hold a local inspection and personally see the condition of the disputed and adjoining plots of land and note the permanent boundary mark e. g., the corner of a *pucca ghat*. This is necessary as the witnesses of the parties have given different versions

regarding the distance between the said *ghat* and the disputed land.

And your petitioner, as in duty bound, shall ever pray.

Signature.

Note:—Read Part II (B) Chapter III p. 260. Read also Part I Chapter VIII pages 80 to 84.

Note—The Court can hold a local inspection for understanding the evidence oral and documentary, adduced before it. But no order can be based solely upon the result of the inspection[1]. Local inspection can be made U/S 539(B). Cr. P. C. The Magistrate is bound to place on the record a report containing the result of the local inspection, for examination of the parties[2]

No. 25. Application for adjournment of a case.

(Section 344 Cr. P. C).

In the Court of the Magistrate of...... ....
Case No. 36 of 1934 Under Section...............I. P. C, or Cr. P. C.

Complainant		*Accused*........................
Son of............	*vs.*	Son of........................
Village......................... .		Village...... ....
Thana............................		Thana ....

In the matter of prayer for adjournment of case No. 36 of 1934.

1. *Lal Behari* v. *Bejoy* 10 C. W. N. 181.
2. *Babbon Sheik* v. *Emp* 37 Cal. 340=14 C. W. N. 422=11 Cr. L. J. 121=5 I. C. 365.

The humble petition of..............complainant petitioner in the above case,

Most Respectfully Sheweth :—

(1) That in the above case two material witnesses, e.g. (names and addresses) summoned by your petitioner, have not appeared to-day. The petitioner has come to learn that both the witnesses are suffering from small pox and are unable to move about. An affidavit by the doctor who is attending the witnesses is appended hereto.

(2) That unless those two material witnesses are examined on behalf of the complainant his case will not be satisfactorily proved.

Your petitioner humbly prays that the case may be adjourned for a fortnight to enable your petitioner to produce the above witnesses before the Court.

And your petitioner, as in duty bound, shall ever pray.

Note :—If the application is made on behalf of the defence for adjournment after the Magistrate issued processes, it is incumbent on the Magistrate to adjourn the case to secure attendance of those witnesses[1].

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1. *Mihir lal vs. Emp.* 24 Cr. L. J. 370 (Cal.) *Vide in the matter of inoo Roy* 16 W. R. 21.

No. 26. Petition filed before a Subordinate Court for adjournment on the ground of moving the High Court for transfer of the case.
(Section 526 Cr. P. C).

In the Court of...... ....Magistrate of.............. ....

Case No...... . ..... of............Under Section......... I. P. C. or Cr. P. C.

Complainant.....		*Accused*... ....
Son of......................	v	Son of......... ....
Village		Village ....
Thana.........		Thana.................. ...

In the matter of an application for adjournment for moving the High Court under Sec. 526. Cr. P. C.

The humble petition of .. ..accused in the above case,

Most Respectfully Sheweth :—

(1) That your petitioner noticed, during the trial, certain irregularities of a very serious type which have given rise to an apprehension in the mind of your petitioner that he is not likely to have a fair trial in this Court (Here state the irregularities).

(2) That without setting out elaborately the various instances of remarks made by the Court adverse to your petitioner—your petitioner simply begs to state here that he has come to learn on an enquiry the following facts :—

(a) That the complainant happens to be a very close relation of your Honour's son by marriage.

(b) That it has transpired on an enquiry that at the time of the incident under complaint your Honour was present very close to the place of occurrence and that the complainant and some of his witnesses met your Honour shortly after the occurrence and narrated an untrue version of it.

(c) That in the circumstances set out in the preceeding paragraph your Honour may be an important witness either for the corroboration or contradiction of the prosecution case.

Your petitioner has, accordingly, been advised to move the Hon'ble High Court for a transfer of the case from your Honour's file to that of some other Magistrate competent to try the case.

Your petitioner therefore prays that the case may be put off to a date fortnight from this day to enable your petitioner to move the Hon'ble High Court for transfer of the case and to get an order staying further proceedings.

And your petitioner, as in duty bound, shall ever pray.

Note.—The recent amendment of section 526 has left no discretion to a Magistrate to refuse adjournment sought on this ground. Of course, to put a stop to frivolous applications on this pretext for getting an adjournment, safeguard has been provided by the Legislature to ensure the *bonafides* of such an application by taking security from the applicant.

No. 27. Application by Public Prosecutor for re-casting charge framed. (Sec. 226 Cr. P. C.).

In the Court of the Sessions Judge.........................
Case No...........

Crown.................. *vs.* *Accused*.............................
Son of..............................
Village...........................
Thana...............................

Sir,

The accused has been charged with forging a valuable security to wit a hand-note U/S 467 I. P C.

I pray that a charge for fabricating false evidence U/S 193 I. P. C. may be added.

I have the honour to be,
Sir,
Your most obedient servant,

Public Prosecutor, Dacca.

Note :—If the committing Magistrate fails to frame a charge for each distinct offence, the Sessions Judge has right to remove the defect and frame the necessary charges before the trial begins. An imperfect and erroneous charge can be corrected and a fresh charge framed by the Court U/S 226 I.P.C.. If the accused is not prejudiced, trial may proceed after alteration or addition made[1]. In framing the charge, the Sessions Judge has to see whether the new or altered charge can be framed on the evidence recorded by the Magistrate[2].

1. Vide Sec 228 Cr. P. C.
2. *Mutiyakal Kävilagatha Rama varma Raja* v. *Queen* 3 Mad. 351.=6 Ind. Jur, 28.=2 Weir.269.

No. 28. Application by complainant claiming compensation under section 545 Cr. P. C.

In the Court of.................................Magistrate
of............................

Case No..............of............Under Section............
I. P. C

Complainant		*Accused*.........................
Son of......	*vs.*	Son of........................
Village		Village......................
Thana........................		Thana........ ....

The humble petition of complainant petitioner in the above case,

Most Respectfully Sheweth :—

(1) That the accused criminally misappropriated a silver watch of your petitioner and he believes that he has been able to prove this.

(2) That the value of the watch, misappropriated by the accused, is Rs. 25/-.

(3) That your petitioner has further incurred an expenditure of Rs. 40/- in prosecuting the accused.

Your petitioner prays that if your Honour be pleased to convict the accused and sentence him to imprisonment and fine your Honour may be pleased to order payment to your petitioner, out of the fine, the value of the watch and the cost incurred by your

petitioner in prosecuting the accused.

And your petitioner, as in duty bound, shall ever pray.

Note.—The Court cannot award compensation for loss in excess of the value of the property[1]. The order of the Magistrate should show how much is awarded for the loss and how much to defray the expenses of the prosecution.

No 29. Petition for withdrawal of complaint.

(Section 248 Cr P. C.).

In the Court of... ... .Magistrate of... ... ...

Case No.........of... .....Under Section 323 I. P. C.

Complainant		*Accused* ... .
Son of...	*vs.*	Son of... .. ..
Village		Village ... .
Thana...		Thana... .. ..

In the matter of petition for withdrawal of the complaint.

The humble petition of... ... ...complainant in the above case,

Most Respectfully Sheweth :—

(1) That the accused is a near relation of the complainant.

(2) That friends and relations of the parties intervened and brought about an amicable settlement of the case between the parties.

1. *Shibdas* 14 Cr. L. J. 659=1913 P.L.R. 335.

(3) That in the above circumstances your petitioner does not like to proceed with the case.

Your petitioner prays that your Honour may be pleased to allow the complainant to withdraw his complaint, and to acquit the accused.

And your petitioner, as in duty bound, shall ever pray.

Note :—If the accused gives his consent to the withdrawal, the case is compromised and section 248 Cr. P. C. has no application. An application for withdrawal may be made in the absence of the accused and even without his consent, The Magistrate has discretion to refuse the prayer of withdrawal unless he is satisfied that there are sufficient grounds for permitting the withdrawal[1].

No. 30. Petition by Public Prosecutor for withdrawing prosecution. (Section 494 Cr. P. C.).

To

The Sessions Judge,

of... ... ...

Crown................ ...... *vs.* *Accused* ... ...

Son of ... ...

Village ... ...

Thana... ... ...

Re : Application for withdrawal from prosecution of accused ... ...

Sir,

In the above case evidence as recorded by the committing Magistrate *prima facie* makes out no case

1. *Bayan Ali* vs. *King Emp.* 20 C. W. N. 1209, = 18 Cr. L. J. 107.

against accused No 2 ... ... To proceed against him any more would mean unnecessary harassment and trouble to the said accused.

May I, accordingly, solicit the favour of your kindly going into the evidence and permit the Crown to withdraw the case as against the above-named accused.

I have the honour to be,
Sir,
Your most obedient servant,
....
Public Prosecutor.

Note :—Section 494 Cr. P. C, authorises any Public Prosecutor to withdraw from prosecution of any accused at any time before the verdict of the Jury is returned. The consent of the Court is very material. In any other case, an application on these lines has to be made before judgment. The effect of withdrawal on such application is acquittal, if charge has already been framed. If the application is made before charge, the effect is one of discharge.

The order passed by the Magistrate is a judicial order and the Court has to record its reasons for its order so that the High Court may consider whether the discretion exercised by the Magistrate in giving consent to the withdrawal has been properly exercised[1].

No 31. Petition for compounding an offence.

(Section 345 Cr. P. C.).

In the Court of..................................Magistrate
of....................

Case No...........of............Under Section 501/502 I. P. C.

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1. *Umesh Chandra Roy* vs. *Satish Chandra Roy*. 22 C. W. N. 69. and *Jagat Chandra Roy*. vs. *Kalimuddi Sardar*, 26 C. W. N. 880.

Complainant...............		*Accused*.....................
Son of........................	vs.	Son of.........................
Village........................		Village.........................
Thana............................		Thana............................

In the matter of compounding the afore-said case under section 501/502 I. P. C. (Defamation.) The humble petition of...........complainant and of...............accused in the above case,

Most Respectfully Sheweth :—

(1) That the complainant brought the above case under sections 501/502 I. P. C. against the accused for an alleged defamatory article published by him in "Health" newspaper.

(2) That the complainant, it appears, has been aggrieved by the said publication. The accused never intended to hurt the feeling of the complainant ; the accused published the article *bonafide* and in the interest of the public regarding the municipal affairs of Naldanga Municipality of which the complainant is the Vice-Chairman.

(3) That the accused expresses his regret for what has happened and the complainant accepts the said expression of regret and is satisfied.

(4) That both the parties do hereby compound the case and pray that the accused may be acquitted in terms of section 345 Cr. P. C.

Your petitioner prays that your Honour may be pleased to give effect to the terms of this petition and pass an order

of acquittal in favour of the accused.

And your petitioner, as in duty bound, shall ever pray

Note —Read Section 345 Cr P. C

Note.—An offence under secs 501/502 I P C. can be compounded without the permission of the Magistrate and the Magistrate is bound to give effect to the compromise and acquit the accused[1] Section 345 Cr P. C describes also the offences which can be compounded only with the permission of the Court In those cases the Magistrate may refuse permission, if he thinks fit to do so, and proceed with the trial When permission is refused the Magistrate is bound to record reasons[2] as the High Court can interfere in revision[3]. *Read Part II chapter IX pages 168 to 172*

No 32 Application under section 562 Cr P. C for treating the accused as a First offender.

In the Court of the Sub-Divisional Magistrate of... ....

Case No ....of 1936. Under section 379 I P.C.

Emperor *vs* *Ramjanam Singh accused.*
Son of ... ...
Village ... ...
Thana ... .

The humble petition of Ramjanam Singh, accused in the above case,

1. *Emp. vs. John*, 45 All 145.
2. *Crown vs. Konoo Meah*, 1 L. B R. 349.
3. *Aminullah vs. Emp.* 26 C. W N. 536.

Most Respectfully Sheweth :—

(1) Your petitioner has been charged with the theft of a goat from the house of his neighbour.

(2) Your petitioner is a young lad of 17 belonging to the first year Arts class of the Patna College, and is respectably connected being the son of a local zeminder.

(3) Your petitioner has a keen sense of dignity and self-respect and moral rectitude.

(4) Your petitioner and some of his friends bet on the last Christmas day that if your petitioner could steal a goat from a neighbour's house and bring it, your petitioner would get a reward of Rs. 5/-. Your petitioner being a young man accepted the offer and stole the goat.

Your petitioner prays that having regard to your petitioner's character, age and antecedents and the circumstances in which the offence was committed, your Honour may be pleased to direct his release on his entering into a bond with or without sureties to appear and receive sentence, if necessary, within a period to be fixed, and in the meantime to be of good behaviour.

And your petitioner, as in duty bound, shall ever pray.

Note :—Read Part II, Chapter XVI pp. 198 to 199

No. 33. Petition for furnishing security for payment of fine.

(Section 388 Cr. P. C.)

In the Court of......................................Magistrate

of..

Case No............of...........Under section......I.P.C.

Crown at the instance of........................	*vs.*	*Accused* ... ...
		Son of ... ...
		Village ... ...
		Thana ... ...

In the matter of an application for permission to furnish security for time to pay the fine imposed.

The humble petition of accused...........in the above case.

Most Respectfully Sheweth :—

1. That your petitioner has been convicted in the above case and ordered to pay a fine of Rs. 50/-.

2. That your petitioner has no money with him, and that he is a poor man and it will take some time before he is in a position to raise the amount necessary for payment of the fine.

3. Your petitioner has some lands which he proposes to mortgage in order to raise money.

In the circumstances stated above your petitioner prays that your Honour may be pleased to allow him 15 days' time to pay the fine and in the mean time to furnish security to the satisfaction of the Court.

And your petitioner, as in duty bound, shall ever pray.

Note :—This application can be made under section 388 Cr. P.C. Cl. 1.

No. 34. Petition for restoration of property claimed by the applicant after conclusion of a trial. (Section 517 Cr. P. C.).

In the Court of.......................................Magistrate of........................

Case No..........of............Under Section................ I. P. C.

Complainant		*Accused* ... ...
Son of	*vs.*	Son of ... ...
Village		Village ... ...
Thana		Thana ... ...

In the matter of a petition for restoration of property.

The humble petition of.................................. complainant in the afore-said case which was disposed of by this Court on..................,

Most Respectfully Sheweth :

(1) That the articles mentioned in Schedule A of this petition and other articles were stolen from your petitioner's house on...............and your petitioner lodged F. I. R. at......... thana on the very day.

(2) That on a search by the Police the articles mentioned in Schedule A were recovered from the house of the accused on............

(3) That the accused was sent up for trial and convicted by your Honour in the afore-said case on............and your Honour's order of conviction was confirmed on appeal by the learned Sessions Judge of............on............

(4) That your Honour was pleased to hold in the

judgment that the articles mentioned in Schedule A were stolen from your petitioner's house.

SCHEDULE A.
List of articles.

Your petitioner prays that under section 517 Cr. P. C. your Honour may be pleased to direct the Police to return the articles mentioned in Schedule A to your petitioner.

And your petitioner, as in duty bound, shall ever pray.

No. 35. Petition for making deposit instead of furnishing Security. (Section 513 Cr. P. C.).

In the Court of..............Magistrate of...............

Case No.......of Under Section......I.P.C. or Cr.P.C.

Complainant		*Accused*
Son of......................	*vs.*	Son of......................
Village		Village ....
Thana		Thana ....

In the matter of making deposit instead of furnishing security by the accused.

The humble petition of...accused in the above case.

Most Respectfully Sheweth :—

(1) That in the afore-said case, your Honour has been pleased by an order of this date to direct your petitioner to execute a bond for Rs. 100/- with two sureties each for the like amount, for appearance of your petitioner in Court on the next day of hearing, that is on..............

(2) That your petitioner instead of executing a

bond with sureties prays for permission to deposit Rs 300/ in Court and gives an undertaking for his appearance in Court on the date fixed. And your petitioner further agrees that the same amount will be forfeited to Government in case the petitioner fails to appear on the afore-said date without sufficient cause.

And your petitioner, as in duty bound, shall ever pray.

Note.—No deposit can be made under section 513 where a bond for good behaviour is ordered to be executed. The money will be refunded on appearance of the accused on the date fixed. Any other person may make the deposit on behalf of the accused on similar conditions and the Magistrate is bound to refund the amount to the depositor on appearance of the accused.

No. 36. Application notifying address of a convicted person. (Section 565 Cr. P. C.).

(*This is to be made after release from jail.*)

In the Court of..............Magistrate...............of

Case No...........of..........

Crown *vs.* *Accused* ....

Son of ....

Village......................

Thana ....

Case under section 325 I.P.C. decided by Sub-Divisional Magistrate of..........on..........

The humble petition of...accused in the above case,

Most Respectfull Sheweth—

(1) That your petitioner was sentenced by this Court to undergo two years rigorous imprisonment

in the above case and the Court further ordered that your petitioner do notify his address for a term of two years after his release from jail.

(2) That your petitioner served out the full period of imprisonment and was released from......jail on......

(2) That your petitioner now intends to reside at his paternal house at.............in the district of............

Your petitioner prays that this petition may be forwarded to the proper authorities for information of your petitioner's address.

And your petitioner, as in duty bound shall ever pray.

Note.—Under the old law if the petitioner resided in the place notified but was temporarily absent for a day or two he was not required to notify his temporary address (*see N. Gadu 40 Mad. 789*) Bnt under the new section 565 Cr. P. C. temporary absence also requires to be notified.

No. 37. Declaration under section 565, Criminal Procedure Code from an accused at the time of his release from jail.

(*This is to be made in jail*)

Alipur Jail.
Dated 20-1-30

I Ram Din Bera Son of Rohoo Bera of Kalia, Thana Tezpur, District Muzaffarpur do hereby declare that I shall reside after my release at Sonakute, and that I shall notify to the Officer-In-Charge of the nearest Police Station or outpost, whenever I change my

residence, for a period of...(the period ordered) years after my release.

Ram Din Bera

Signature (or left thumb impression)

Attested by	*Countersigned*
P. C. Mitter	Sd. K. Smith.
Jailor.	Superintendent.
Alipur Jail.	

No. 38. Petition for bail. (Section 426 Cr. P.C.).

In the Court of the Sessions Judge at Alipore,
24 Parganas.

Case No.........of.........Under Section 379 I. P. C.

Crown *vs.* *Accused* ....
Son of.................
Village ....
Thana.................

In the matter of petition for bail of the accused (petitioner) pending the hearing of the appeal.

The humble petition of the accused in the above case,

Most Respectfully Sheweth :—

(1) That your petitioner was convicted by the Sub-Divisional Magistrate of.........under section 379 I.P.C. on........and sentenced to undergo 3 months' R.I.

(2) That your petitioner has this day filed an appeal before your Honour against the said order of conviction and sentence.

(3) That the cow alleged to have been stolen by the petitioner was purchased by him in a *hat* (public mart) on.........for Rs. 15/- and that this fact was proved by no less than six witnesses.

(4) That your petitioner was a *bonafide* purchaser of the cow for value and had no knowledge or even suspicion that the cow was a stolen property.

(5) That your petitioner is a cultivator of fairly good means and he has 70 *bighas* of *Lakheraj* land in his village and that there is no apprehension of your petitioner absconding pending the hearing of the appeal.

Your petitioner prays that your Honour may be pleased to grant *ad interim* bail to your petitioner pending the hearing of the appeal.

And your petitioner, as in duty bound, shall ever pray.

N. B. The prayer may also be made in the petition containing the grounds of appeal. Law as to bail has been fully discussed at pages 220 to 226.

No. 39. Petition for bail under section 498 Cr. P. C.

In the Court of the Sessions Judge,...............

Case No.........of............pending in the Court of the Sub-Divisional Magistrate of............

Emperor *vs.* *Accused* ....
Son of.................
Village ....
Thana..................

In the matter of an application of.........for bail.

The humble petition of.........accused,

Most Respectfully Sheweth :—

(1) That it was alleged that there was a dacoity in the house of............on the night of............and your petitioner was arrested by the Police some two weeks afterwards on.........at his house. The charge-sheet in the case was submitted on.........Your petitioner's prayer for bail was rejected by Mr.............. Sub-Divisional Officer.........on.........Being aggrieved by the order of the learned Magistrate refusing to grant bail to your petitioner, he begs to move your Honour on the following amongst other grounds.

Grounds.

(1) That the name of your petitioner does not appear in the First Information Report.

(2) That no incriminating article was found in the house of your petitioner on a search by the Police, and that he was arrested on mere suspicion, and that your petitioner is perfectly innocent of the charge.

(3) That no inmate of the house of.................... identified your petitioner in the identification parade held inside the............Jail by Mr.................... a second class Magistrate.

(4) That the accused has 30 *bighas* of land in his village and that he resides in his house with his wife and children.

(5) That there is no possibility of your petitioner escaping or absconding during trial.

(6) That your petitioner is willing to furnish proper security for appearance in Court to take his trial.

Your petitioner prays that your Honour may be pleased to call for the record and issue notice to the Public Prosecutor and on hearing the parties be graciously pleased to pass an order directing release of your petitioner on bail.

And your petitioner, as in duty bound, shall ever pray.

Dated........... ....

Signature.

Note.—An affidavit may be filed in support of the statements made in the petition, or this petition may be sworn. *Read pages 220 to 226.*

No. 40. Bail petition before a Magistrate during police enquiry. (Sec. 496 Cr. P. C.).

In the Court of..................Magistrate of.

Emperor *vs.* *Accused*.....................
Son of..............................
Village ....
Thana.............................

In the matter of petition for bail of accused............during Police enquiry.

The humble petition of..............accused,

Most Respectfully Sheweth :—

(I) That your petitioner was arrested by the Police on mere suspicion on............That nearly a month has passed after the arrest but still Investigating Police Officer has not submitted a charge-sheet.

(2) That your petitioner was not identified by any inmate of the house of..................where the dacoity is alleged to have taken place, nor any incriminating article was found in his house.

(3) That your petitioner has reason to believe that one.................with whom your petitioner is on bad terms and who is looking after the case for the complainant has falsely implicated your petitioner in the case out of grudge.

Your petitioner prays that your Honour may be pleased to call for Police papers and after perusing the same be pleased to direct the release of your petitioner on bail.

And your petitioner, as in duty bound, shall ever pray.

Note :—*Read pages 220 to 226.*

No. 41. Bail petition before a Magistrate in a pending case. (Sec. 496 Cr. P. C.).

In the Court of..............................Magistrate of..

Case No.........of...........Under Section..........I. P. C.

Emperor vs. *Accused*...................

In the matter of petition for bail of accused...

The humble petition of.......................accused in the above case,

Most Respectfully Sheweth :—

(1) That your petitioner was arrested by the

Police on suspicion on...............That he was not named in the F.I.R. nor was he identified by any inmate of the house, where the dacoity is said to have taken place, during the identification parade held by Mr ....a Magistrate, Second Class.

(2) That nothing incriminating was found in his house on search by the Police.

(3) That your petitioner is a family man and is not likely to abscond.

(4) ....

Your petitioner prays that after issuing notice to the Crown and hearing both sides your Honour may be pleased to pass orders for releasing your petitioner on bail.

And your petitioner, as in duty bound, shall ever pray.

Note :—Application for bail is ordinarily made under section 496 Cr.P.C. In case of every bailable offence the petitioner is entitled to bail as a matter of right unless the Crown can make out a case for refusal of bail[1]. A Magistrate, if he refuses bail, has to record reasons. He can ask the Police to report about the sufficiency of the bail. Bail may be allowed even in case of a non bailable offence (Section 497 Cr. P.C.). For matters to be considered by Court while dealing with bail application—*Read In the matter of Nagendranath*[2]. The High Court and the Sessions Courts have wide powers to grant bail in any case (Section 498 Cr. P.C.). These Courts can interfere and grant bail after arrest by the Police. *Read pages 220 to 226. for further particulars.*

1. *Raghunandan* vs. *Emp.* 32 Cal. 80. =8 C. W. N. 779=1 Cr. L. J. 775.
2. 51 Cal. 402=38 C.L.J. 388.=A. I. R. 1924 Cal. 476.

No. 42. Bail Petition.
(Another form).

In the Court of the Sub-Divisional Magistrate of...

			Accused.
Emperor	*vs.*	1.	*Omar Sirdar.*
		2.	*Nathni Khan.*
		3.	*Mir Panjatan Nawab.*
		4.	*Hafiz Mia.*

Case.—U/S 188 I.P.C. 117 Cr. P. C. 29 Police Act. 151 Cr. P. C.

The humble petition of the accused persons named above,

Most Respectfully Sheweth :—

(1) That your petitioners were arrested by Bijpore Police under section 151 Cr. P. C. yesterday (6-4-37) at 1-30 p.m. and were kept in lock up in Bijpore Police Station, and the bail offered by your petitioners was refused by the Police.

(2) That your petitioners have been produced before Your Honour this day and they have been charged under Sections............I. P. C.

(3) That the offences mentioned in para 2 are all bailable.

Under the circumstances your petitioners pray that they be released on bail pending the disposal of the case.

And your petitioners, as in duty bound, shall ever pray.

Dated Barrackpore.
The 7th April 37.

No. 43. Petition by a surety for his discharge.
(Section 502 Cr. P. C.).

In the Court of.........Magistrate of.....................

Case No...of......Under Section...I. P. C. or Cr. P.C.

Complainant		*Accused* ....
Son of.........................	*vs.*	Son of ....
Village		Village .. ..
Thana		Thana ....

In the matter of an application for discharge from suretyship.

The humble petition of ....Surety for the accused in the above case,

Most Respectfully Sheweth : –

(1) That in the above case your Honour was pleased to order release of the accused on his furnishing bail to the extent of Rs. 200/- and that your petitioner who is a Muktear of your Honour's Court executed a bond for the said sum for the production of the accused before your Honour on the date fixed for the trial.

(2) That on an enquiry your petitioner has come to learn that the accused for whom your petitioner stood as a surety is a man of straw and has no fixed place of residence.

(3) Your petitioner, who is a man of modest means, has much to fear if the accused does not prove as good as his promise and fail to appear before your Honour on the date fixed for hearing of the case.

(4) That the accused is present in Court and your petitioner begs leave to surrender him.

In the circumstances stated above, your petitioner prays that he may be released from the suretyship and all obligations arising there under.

And your petitioner, as in duty bound, shall ever pray.

Note :—Suretyship being a matter of contract between the surety and the Crown, it is open to the surety to apply for his discharge at any time before the condition of the bond has been broken. In other words, the Magistrate has no discretion but to allow an application for discharge without reference to or hearing the accused. The cancellation of the bond follows as a matter of course on an application of this type[1].

No. 44. Petition for remission of the penalty wholly or in part on forfeiture of bond. (Section 514 Cl. (5). Cr. P. C.).

In the Court of.........Magistrate of.........

Case No.............of.........Under Section.........
I. P. C. or Cr. P. C.

Complainant		*Accused* ... ...
Son of		Son of ... ...
Village	*vs.*	Village ... ...
Thana		Thana ... ...

In the matter of petition for remission of penalty.

The humble petition of....................a Muktear of this Court,

1. *In re Narayan Shivaram* 9 Bom. L. R. 1285=7 Cr. L. J. 24.

Most Respectfully Sheweth :—

(1) That your petitioner stood as a surety for accused...............and executed a bond for Rs. 100/- for appearance of the accused in Court on......... But that the accused could not appear on that date fixed as he suddenly fell ill, being attacked with Choleric Diarrhœa, and your Honour was pleased to forfeit the bond and direct your petitioner to pay Rs. 100/- to Government as penalty.

(2) That the accused has this day come to Court with a medical certificate from the Sub-Assistant Surgeon of......................to show that the accused really fell ill on the date fixed for his appearance in Court.

In the circumstances your petitioner prays that the order of forfeiture of the bond executed by your petitioner may be re-considered and he may be excused or in the alternative be directed to pay a nominal sum only.

And your petitioner, as in duty bound, shall ever pray.

Note :—No order of forfeiture can be passed without a notice to the person whose bond is forfeited[1] Surety is bound to see that the accused does not abscond. Where the surety is diligent and there is no negligence or connivance on his part, the Magistrate may excuse him[2].

1. *Sarju vs. Jai Raj.* 25 Cr. L. J. 445=A. I. R. 1925 Oudh 51.

2. *Parbhu Dayal* 49 All. 825, *See Part II (A) Chapter II page 225.*

No. 45. Petition of appeal from an order passed under section 118 Cr. P. C. in a proceeding under section 107 Cr. P. C. (Section 406 Cr. P. C.).

In the Court of the District Judge,
Gaya.

Proceeding under section 107 Cr. P. C.—Case No......

In the matter of a petition of appeal of...........son of...........of...............

The humble petition of..................................

Most Respectfully Sheweth :--

(1) That your petitioner was ordered to furnish security for keeping the peace by the learned Sub-Divisional Magistrate of.........exercising first class powers on...............or in default to undergo rigorous imprisonment for a term of six months.

(2) Your petitioner adduced evidence before the Magistrate to show that there was no likelihood of a breach of the peace or disturbance of public tranquility at the instance of your petitioner.

(3) That the learned Magistrate could not see his way to believe the evidence produced by your petitioner before him and your petitioner was ordered to execute a bond for Rs. 500/- with two sureties each for Rs. 250/- for keeping peace for one year.

(4) That your petitioner who is aggrieved by the afore-said order of the learned Magistrate begs to prefer this appeal against the said order on the following amongst other grounds :—

Grounds.

(i) For that the learned Magistrate ought to

have believed the evidence on your petitioner's side and held that your petitioner is a lawabiding, peaceful subject never likely to commit a breach of the peace as alleged or apprehended.

(ii) That most of the witnesses who deposed against your petitioner are inimically disposed towards him for reasons of private interest as suggested in cross-examination.

(iii) For that the witnesses examined against your petitioner are men of no standing in the locality.

(iv) For that the learned Magistrate should have believed the suggestion of your petitioner against P. W. 1 that the whole proceeding was being engineered by......................., a rival zeminder of your petitioner's employer Mr.......................................

(v) For that the alleged breach of the peace never took place although apprehended for a period of 10 days after the incident and before the starting of the proceeding—a fact which is only indicative of the hollowness of the allegation touching a highly inflammable temper of your petitioner and the possibility of any crime affecting the breach of the peace in consequence.

(vi) For that the witnesses on your petitioner's side were disinterested respectable local people who have better opportunities of knowing first hand the alleged incident than any of the witnesses examined against your petitioner, the latter being mostly chance-witnesses or handy people of the petitioner's adversary.

(vii) For that the amount of security fixed is much too heavy.

In the circumstances stated above, your petitioner prays that your Honour may be graciously pleased to admit the appeal, call for the record and after hearing the matter set aside the order of security for keeping the peace passed by the learned Magistrate.

And your petitioner, as in duty bound, shall ever pray.

Note:—Under the old law appeal lay to the District Magistrate but under the amended section 406 Cr. P. C. appeal will lie to the Sessions Judge[1].

No. 46. Petition of appeal with a prayer for *ad-interim* bail.

In the Court of the Sessions Judge
of.........................

Accused—Appellant.......................................

vs.

Complainant—Respondent.........................

Conviction under section 411 I. P. C.

The humble petition of the appellant above-named,

Most Respectfully Sheweth :—

(1). Your petitioner who was charged for an

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1. *Mohendra* v. *King Emp.* 48 Cal. 874=23 Cr. L. J. 229=25 C. W. N. 383.

offence under section 411 I.P.C. was tried by Mr...... ....a Sub-Divisional Magistrate of.............. exercising first class powers and sentenced to undergo 6 months' R. I. and to pay a fine of Rs. 100/-.

(2) The case against your petitioner was that he had purchased certain silver wares and a cigarette case from a certain up-country man knowing or having reason to believe that the articles had been stolen from Mr. T. Thompson's bungalow.

(3) Your petitioner's defence substantially was that he is a goldsmith dealing in jewelleries and silver articles and he purchased those articles in good faith having not even the faintest idea that they were stolen properties.

(4) That the learned Magistrate disbelieved your petitioner's plea of good faith and convicted him as afore-said under section 411 I. P. C. Being aggrieved by the afore-said order of conviction and sentence, your petitioner begs to prefer this appeal on the following amongst other grounds :—

Grounds.

(a) For that the conviction is bad in law.

(b) For that the learned Magistrate should have inferred from the conduct of your petitioner deposed to by the Investigating Officer that he was absolutely straightforward in his dealings and that such a conduct of your petitioner as has been deposed to by P. W. s 3 and 4 would hardly be consistent with his guilty knowledge.

(c) For that the learned Magistrate should have

believed that the articlss were purchased *bonafide* for proper market price and inferred from that the absence of any guilty knowledge of your petitioner.

(d) For that the learned Magistrate should have takên into account the representation made to him by the alleged thief.

(e) That the articles sold were common articles of every day use to be found in the possession of people of even modest means.

(f) For that the learned Magistrate should have disbelieved evidence of P. W. s 4 and 5 who identified the cigarette case alleged to belong to Mr. T. Thompson and should have held that it was an ordinary cigarette case incapable of identification in the absence of any mark or monogram or something of that type.

(g) For that the learned Magistrate should have believed D. W. 2 who proved having sold the same cigarette case to your petitioner some 2 months before the occurrence.

(h)..

In the circumstances stated above, your petitioner prays that your Honour may be pleased to admit the appeal, call for the record, release your petitioner pending disposal of the appeal on bail and after hearing the case set aside the order of conviction and sentence or pass such

other order as the ends of justice may call for.

And your petitioner, as in duty bound, shall ever pray.

Note. A bail petition may be separately filed. The copy of the judgment of the trial Court should be filed along with the petition of appeal. An appeal is to be filed within 30 days from the date of the order convicting the petitioner, exclusive of the time required for getting copies

See Part III Chapter VIII Under Section 111 I. P C at pages 401—402.

No 47, Appeal from an order rejecting application for restoration of attached property (Section 405 Cr. P. C)

In the Court of the District Judge,

....

Complainant		*Accused* ....
Son of	*vs.*	Son of ... .
Village		Village ....
Thana		Thana ....

In the matter of an appeal from an order passed by Mr, ... Sub-Divisional Officer, Magistrate, 1st class, refusing the petitioner's application for restoration of attached property.

The humble petition of........ ....accused,

Most Respectfully Sheweth :—

(1) That the complainant, it appears, brought a case against your petitioner under section 323 I. P. C. on...................................

(2) That the petitioner who belong to the labouring class left his village on..............in search of work and secured a job as a menial servant under Babu..............................of......................, District where he served for 12 months.

(3) That your petitioner when he left his village did not know of any criminal case started against him by the complainant.

(4) That on his return to his village on.............. your petitioner came to know that his movable properties mentioned in Schedule A were attached and sold and that the sale preceeds, after defraying the costs of attachment and sale, amounting to Rs. 35/- were deposited in Court.

(5) That your petitioner made an application before the Magistrate under section 89 Cr. P. C. for payment to him of the afore-said sale proceeds but that the learned Magistrate rejected the prayer.

Being aggrieved by the said order your petitioner begs to prefer this appeal to your Honour on the following amongst other grounds :—

Grounds.

(i) That the learned Magistrate should have held on the evidence that your petitioner *bonafide* left his village in search of work and that he had no knowledge of the case started against him by the complainant and that your petitioner had no notice about the proclamation and the attachment proceedings.

(ii) That on the evidence the learned Magistrate should have held that the case against your petitioner under section 323 I. P. C. for causing simple hurt was

maliciously false and that your petitioner did not abscond or conceal himself for the purpose of avoiding execution of the warrant.

(iii) That the learned Magistrate should have held on the evidence that the complainant who is a neighbour of your petitioner maliciously started the false case being fully aware of tho fact that your petitioner was about to leave his village in quest of work as was done by him in previous years.

(iv) That the application for restoration was made within two years from the date of attachment and was not barred.

(v) That the order of the learned Magistrate is otherwise contrary to law and against the weight of evidence on the record.

Your petitioner prays that your Honour may be pleased to call for the record of the lower Court and after hearing the parties set aside the learned Magistrate's order and be further pleased to direct the learned Magistrate to pay to the petitioner the sale proceeds in deposit in Court.

And your petitioner, as in duty bound, shall ever pray.

Note.—The application for restoration must be made within two years (Section 89 Cr. P. C.) and the appeal should be filed within 30 days from the date of the order rejecting the prayer.

No. 48. Appeal under section 406 Cr. P. C. from an order under sec. 118 Cr. P. C.

To

The Sessions Judge,

Purnea.

In the matter of an appeal under sec. 406 Cr. P. C.

1............................ } *Petitioners*
2............................ } *Appellants*

The humble petition of.......................... petitioners.

Most Respectfully Sheweth :—

(1) That the learned Sub-Divisional Officer of Kala Pahar in the District of Purnea on an information received from Police drew up proceedings against your petitioners under section 110 Cr. P. C.

(2) That your petitioners, were served with an order setting forth the substance of the information received,—to the effect that your petitioners were by habit robbers and house-breakers—and were called upon to show cause why each of your petitioners shall not execute bonds for Rs. 200/- with one surety for the like amount for their good behaviour for 2 years.

(3) That subsequently the learned Magistrate held an enquiry and ordered each of your petitioners to execute a bond for Rs. 200/- with 1 surety each for the like amount for good behaviour for 2 years.

Being aggrieved by the said order your petitioners beg to prefer this appeal on the following amongst other grounds :—

Grounds.

1. For that the order of the learned Magistrate does not show that he considered the case of each of the appellants separately and came to separate findings as regards each of the them[1].

2. That the learned Magistrate should have followed the procedure of a warrant case and not that of a summons case in the enquiry.

3. For that the learned Magistrate erred in law by taking fresh evidence for the prosecution after the close of the defence case without assigning valid reasons therefor.[2]

4. That the learned Magistrate did not weigh the evidence of general repute carefully as required by law.[3]

5. That the learned Magistrate refused to allow cross-examination of the witnesses for the Crown as to how they came to form their opinion against the character of your potitioners.[4]

6. For that..

....

And your petitioners pray that your Honour may be pleased to call for the record

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1 Read the case of *Ayodhya* v. *Emp.*, 35 Cal. 929 and *Kalu Mirja* v. *Emp.*, 37 Cal. 91

2. *Ganga Sing* v. *King Emperor*, 10 A. L. J. 383=13 Cr.L.J. 772.

3. *Emp.* v. *Kurwa*, 26 A.L.J. 519=130 Cr. L.J. 122 (124)=A.I.R. 1928 All. 357.

4. *Bechai* v. *K. E.*, 12 A. L. J. 937=15 Cr. L. J. 705.=A.I.R. 1914 All. 280.

and after hearing your petitioners may be pleased to set aside the order complained of.

And your petitioners, as in duty bound, shall ever pray.

Note.—*For law on the subject and procedure followed read Part II, Chapter I pp. 99 to 115.*

No. 49. Appeal from conviction by Union Bench.

In the Court of the Additional District Magistrate of Mymensing.

Cr. Motion No............of..................

1. Shaik Bisu Mondal, 2. Md. Sobdar Ali, 3. Md. Noor Ali, 4. Kafiladdi Mondal, 5. Jamiruddin Mondal, 6. Ellabox Mondal, 7. Belat Ali Mondal, 8. Mohammad Mondal, 9. Kalu Mondal, 10. Latif Sardar,	*Petitioners.* *Appellants.*

vs.

Shaik Md. Herastulla, *Opp. Party.*

Conviction in Case No. 32 of 1937 of Union Bench.

The humble petition of appeal of the appellant petitioners abovenamed,

Most Respectfully Sheweth:—

That your petitioners were all tried and convicted

on 6-11-37 by the Union Bench of Madral Narayanpur U/S 448 & 504 of the Indian Penal Code; and that your petitioners No. 1 to 5 were fined Rs. 20/- each and the rest Rs. 5/- each and in default R. I. for one week. Being aggrieved by the said order of conviction and sentence your petitioners beg to prefer this petition on the following amongst other grounds :—

Grounds.

1. For that the conviction is bad in law.

2. For that the petition of complaint *prima facie* disclosed an offence U/S 147 I. P. C. which was not triable by the Union Bench and consequently the order passed was evidently one without jurisdiction.

3. For that the evidence adduced by the complainant did not even establish the case and your petitioners should have been acquitted.

4. For that the President of the Bench who was a rival of petitioner No. 2, and who is also the President of a neighbouring Union should not have tried the case which was in fact an offshoot of village politics.

5. For that the Union Bench had no reasons for disbelieving the defence witnesses who are respectable men.

6. For that great failure of justice has been occasioned by the order complained against.

7. That your petitioners, who applied for a copy of the judgment on the very date of their conviction, have not yet been supplied with the copy of the judgment and your petitioners beg leave to file this petition of appeal without any copy of the judgment.

That your petitioners beg to file along with this certified copies of certain other papers which may throw some sidelight on the case and its nature and petitioners undertake to file a certified copy of the judgment as soon as the record be available here provided your Honour so directs.

In the circumstances stated above your petitioners pray that your Honour may be graciously pleased to call for the record and after hearing your petitioners' Advocate set aside the order of conviction and sentence or pass such other order as the ends of justice may demand.

And your petitioners, as in duty bound, shall ever pray.

Dated, Mymensing }
The 1st. December, 1937, }

No. 50. Petition of Appeal to the High Court.

In the High Court of Judicature at Fort William in Bengal.

(*Criminal Appellate Jurisdiction*)

In the matter of

An appeal under sec..........Cr. P. C.

&

In the matter of

1.......................................

2.......................................

Accused Appellants (in jail)

vs.

The King Emperor.

In the matter of an appeal from order of conviction passed under sec. 395 I. P. C. on 2-5-37, by the learned Sessions Judge of Mymensing.

To

The Hon'ble......................Chief-Justice and his companion Justices of this Hon'ble High Court.

The humble petition of the appellants petitioners above named,

Most Respectfully Sheweth :—

That your petitioners and several other persons were tried by the learned Sessions Judge of Mymensing with the aid of a common Jury on a charge of dacoity under sec. 395 I. P. C. and the Jury unanimously found your petitioners guilty and they were convicted on the 3-1-37 under sec. 395 I. P. C. and sentenced to undego 7 years rigorous imprisonment each.

That being aggrieved by the afore-said order of conviction and sentences your petitioners beg to prefer this appeal to this Hon'ble Court on the following amongst other grounds.

Grounds.

(1) That the learned Sessions Judge did not warn the Jury that the evidence of the accomplice was unworthy of credit and that it was unsafe to convict the appellants on the uncorroborated testimony of the accomplice. The learned Judge simply said that if the evidence of the accomplice be accepted by the Jury as true, they might convict all the accused in the case.

(2) That the appellants were not recognised by any inmates of the house of Babu Sarada Prosad Ghose of village Bagmari in whose house the dacoity was alleged to have taken place though the appellants were known to the inmates of Sarada Babu's house, being his neighbours, and that the learned Judge failed to draw the attention of the Jury to this material fact.

(3) That the learned Judge in his charge to the Jury did not draw the attention of the Jury to the fact that the appellants were not named in the First Information Report and that they were not identified by any inmate of the house of Babu Sarada Prosad Ghose at the identification parade held by Deputy Magistrate Mr. M. Roy of Mymensing, inside the Mymensing Central Jail.

(4) That the learned Judge did not tell the Jury that incriminating articles were not found in the houses of the appellants though such articles were found in the houses of three other accused in the case.

(5) That the learned Sessions Judge failed to examine the appellants after the prosecution evidence was closed, thus depriving them of placing before the Jury what they had got to say about the charge against them.

(6) For that the learned Judge did not place the case of each accused separately before the Jury.

(7). For that.......................

In the circumstances stated above your petitioners pray that your Lordships may be pleased

to admit the appeal and to call for the record of the case and on a perusal the record and on hearing the advocate for the appellants be graciously pleased to set aside the verdict of the Jury and the conviction and sentences based thereon or pass such other orders as to your Lordships may seem fit and proper.

Your petitioners further pray that pending the hearing of the appeal your Lordships be pleased to order release of your petitioners on bail.

And your petitioners, as in duty bound, shall ever pray.

No. 51. Petition for further enquiry into a complaint dismissed. (Section 436 Cr. P. C.).

(Old No. **51** is now No. **9**).

In the Court of the Sessions Judge,
Faizabad.

Case No 35 of 1934 in the Court of the S. D. O.,
Faizabad.

Complainant (X) *vs.* *Accused* (Y)
Petitioner *Opposite Party*

The humble petition of X son of...........
Village........... Thana...........
complainant in the above case,

Most Respectfully Sheweth :—

(1) That on......................your petitioner was severely assaulted by accused Y when he (petitioner) was cultivating his land specifically mentioned in the schedule annexed hereto.

(2) That your petitioner presented a petition of complaint before the S. D. O. Faizabad against the accused and prayed for summoning him under section 323 I. P. C. The petitioner showed the marks of injury on his person to the Magistrate at the time of filing the petition of complaint.

(3) That the learned Magistrate after examining the complainant ordered a Police enquiry and on receipt of the Police report dismissed the complaint on.........

(4) That the Sub-Inspector of Police did not go to the locality but examined the complainant and his brother at the thana. The petitioner requested the Sub-Inspector of Police to give him 1 day's time to adduce further evidence but his prayer was refused.

(5) That the occurrence took place in front of the market and many respectable shop-keepers witnessed the incident and their names were mentioned in the petition of complaint.

(6) That the learned S. D. O. refused to examine witnesses tendered by the complainant after the submission of the Police report.

(7) That the ends of justice require that the matter may be thoroughly enquired into.

Your petitioner prays, for further enquiry about his complaint, preferably by some other Magistrate of the same place, after giving an opportunity to the accused

of showing cause why the petitioner's prayer should not be granted.

And your petitioner, as in duty bound, shall ever pray.

SCHEDULE—Description of land :—

Note.—This application can be made either before the Sessions Judge or the District Magistrate, These Courts have concurrent jurisdiction under section 436 Cr. P. C. The High Court may be moved afterwards, if necessary. *See Part IIB, Chapter II, Pages 251 to 260..*

No. 52. Petition for further enquiry

(Old No. **52** is now No. **10**).

(Another form).

In the Court of the District Magistrate of Sylhet.

Emperor (on the complaint of S. K. Karim)

vs. *Petitioner.*

1. Bonbir
2. Dhanbir } *Opp. Party*
3. Kishen Singh.

In the matter of an application for further enquiry under section 436 Cr. P. C.

The humble petition of S. K. Karim informant and complainant in the above case,

Most Respectfully Sheweth :—

(1) That on an *Ejahar* lodged by your petitioner at Bijpur Police Station, the S. I., took up the investigation, and submitted a charge-sheet against Bonbir and 8 others.

(2) That the case was taken up for hearing by Mr. T. B. Bose who examined 23 witnesses.

(3) That on 19. 8. 36 the learned trying Magistrate framed charges against six of the accused but discharged Bonbir, Dhanbir and Kishen Singh with the remark "evidence against them is not sufficient."

Your humble petitioner begs leave to state that the afore-said order of discharge has occasioned miscarriage of justice on the following amongst other grounds :—

Grounds.

1. For that evidence on the record is overwhelming and not "not sufficient" as remarked by the learned Magistrate.

2. For that Bonbir being the principal accused, his discharge would seriously prejudice the merits of the prosecution case as against the accused against whom charges have been framed.

3. For that the learned Magistrate's remark about the insufficiency of evidence against Bonbir can only point to the fact that the evidence against the rest of the accused (charged) if judged by the same standard is still less sufficient.

4. For that the order of discharge of the accused Bonbir is a very striking instance of misappreciation of evidence which would call for interference.

Your Honour's petitioner would, accordingly, pray that the record of the case be called for and after going into the evidence of the case your

Honour may be pleased to direct a further enquiry by the trying Magistrate or by some other Magistrate competent to try the case, according as the ends of justice may call for.

And your petitioner, as in duty bound, shall ever pray.

See note at the bottom of petition No. 51.

No. 53. Application for further enquiry under Sections 435/436 Cr. P. C. against an order of dismissal under Section 203 Cr. P. C.

(Another form)

In the Court of the District Judge of Sylhet.
Criminal Motion No. 48 of 1933.

In the matter of an application for further enquiry.

Atul Krishna Paul, *Petitioner*.
Nathu Kurmih, *Opp. Party*.

The humble petition of the Petitioner above-named,

Most Respectfully Sheweth :—

That your petitioner preferred a complaint against Nathu Kurmih U/S 448, 500 and 504 I. P. C., before the learned Sub-Divisional Magistrate of Netrokona on 17-5-33 and that the said petition of complaint was dismissed U/S 203 Cr. P. C. Being aggrieved by the said order of dismissal your petitioner begs to put in this application U/S 435 and 436 Cr. P.C., for further enquiry on the following amongst other grounds :—

Grounds.

(1) For that the learned Magistrate should have issued process or at any rate directed an enquiry.

(2) For that the learned Magistrate was not justified in dismissing the complaint as "too slight."

(3) For that the learned Magistrate did not disbelieve the story of the complaint or characterize the same as grossly exaggerated and consequently no ground for dismissal was made out

(4) For that the accused used very filthy language towards the complainant (having called him a son of whore)—an expression which amply makes out a case U/S 500 or 504 I. P. C.

(5) For that the petition also *prima facie* makes out a case U/S 448 I. P. C.

(6) For that some 6 witnesses of good social standing having been mentioned in the petition of complaint, it did not merit a summary dismissal.

Your petitioner, accordingly, prays that your Honour may be graciously pleased to call for the record and order for further enquiry U/S 436 Cr. P. C.

And your petitioner, as in duty bound, shall ever pray.

Sylhet,
The 20th May, 1933.

Read Part II (B) Chapter II pp 252 to 259.

No: 54. Application under section 437 Cr. P. C. for revision of an order of discharge and for Commitment.

In the Court of the District Judge (District Magistrate) of......... ....

Case No............of.........Under Section 304 I. P. C.

Emperor.	*Accused.*
at the instance of X	Balded Rao
father of	(*Opposite Party.*)
deceased Y........... .(*Petitioner.*)	

In the matter of the revision of an order of discharge passed by the S. D. O., Aurangabad in the District of Sahabad in case No. 39 of 1935.

The humble petition of X father of Y of village ....Thana...................

Most Respectfully Sheweth :—

(1) That the learned S. D. O., in the case noted above has improperly discharged the accused though the offence of which the accused was charged with was culpable homicide not amounting to murder (Section 304 I. P. C.) triable exclusively by the Court of Sessions.

(2) That there was sufficient evidence including the evidence ot 3 eye witnesses, e.g.

1...................
2...................
3.... ....

to show that the accused inflicted a severe blow with a *Dao* on the right shoulder of the deceased Y without

any provocation whatsoever and that the accused caused the wound knowing that it was likely to result in death but probably without any intention to kill the deceased.

(3) That Your petitioner is the father of the deceased Y and that the proceeding against the accused was started at his instance.

Your petitioner prays that the Court may be pleased to call for the record of the lower Court and after giving an opportunity to the accused to show cause, be pleased to commit the accused to the Court of Sessions for taking his trial under section 304 I. P. C.

And your petitioner, as in duty bound, shall ever pray.

Note :—Section 437 applies only when the offence is triable exclusively by the Court of Sessions and not otherwise. The Sessions Judge or the District Magistrate may order commitment direct to the Court of Sessions. This application cannot be made when the accused was not discharged but acquitted.[1] A Similar application may be made before the Sessions Judge as well. If the District Magistrate rejects the application it cannot thereafter be renewed before the Sessions Judge as both have concurrent jurisdiction. After rejection of the application either by the District Magistrate or the Sessions Judge an application for revision can be filed in the High Court.

Read Part II (B) Chapter II, pp 251 to 257.

1. *Baijanath* vs. *Gauri* 20 Cal. 633.

No. 55. Application for revision before the District Magistrate. (Section 435 Cr. P. C.).

In the Court of the District Magistrate,
Barisal.

Accused (Petitioner)......		*Complainant* (Opposite Party).....
Son of........................	*vs.*	Son of........................
Village........................		Village........................
Thana........................		Thana........................

In the matter of prayer for revision of an order dated...... passed by Mr. B. B. Roy, Sub-Divisional Officer, (a 1st Class Magistrate) of Barisal in case No. 37 of 1935 sentencing the accused (petitioner) to pay a fine of Rs. 30/-.

The humble petition of Accused Petitioner.... ....

Most Respectfully Sheweth :—

(1) That the complainant opposite party who is a brother of your petitioner charged your petitioner with trespass for entering into a garden for plucking cocoanuts and claimed the said garden as his exclusive property.

(2) That the said garden is a joint property of the complainant and his brother, (the accused), both of whom inherited it on the death of their father late Mr.....................in the year............

(3) That there was no partition between the two brothers of their joint properties.

(4) That the complainant and the accused were peacefully enjoying the joint garden and that their joint right as owners of the garden was recorded in the Record-of-Rights which was published about three years ago.

(5) That the case of the complainant that there was an amicable verbal partition between the two brothers and that the garden fell to the share of the complainant is absolutely untrue.

(6) That the learned Magistrate accepted the story of the complainant and convicted your petitioner under section 447 I.P.C., and sentenced him to pay a fine of Rs. 30.

Being aggrieved by the said order of conviction and sentence, your petitioner begs to prefer this motion on the following amongst other grounds.

Grounds.

(i) That the learned Magistrate ought to have relied on the finally published Record-of-Rights of recent date and held that the complainant and the accused were in joint possession of the garden.

(ii) That the learned Magistrate entirely overlooked the mortgage bond (Exhibit A) in respect of the garden jointly executed by the complainant and the accused in favour of the mortgagee Mr.............. of...........some six months before the occurrence and failed to consider the said important piece of documentary evidence in his judgment.

(iii) That on a consideration of the above documentary evidence and other evidence adduced by your petitioner the learned Magistrate should have dis-

missed the complaint holding that the case was one of a purely civil nature.

Your petitioner prays that your Honour may be pleased to call for the record and on a perusal of the same and on hearing the parties, be pleased to refer the case to the Hon'ble High Court with a recommendation for quashing the conviction of your petitioner.

And your petitioner, as in duty bound, shall ever pray.

Note :—*See note below the Application No. 51.*

No. 56. Application for revision under section 435 Cr. P. C.

In the Court of the Sessions Judge

of......................

Complainant...............		*Accused* (*Petitioner*)......
Son of.........	*vs.*	Son of.......................
Village........................		Village...... ....
Thana........................		Thana................. .....

In the matter of the petition for revision of the order passed by Mr......................., Sub-Divisional Officer,..............District..............in case No.......... of........... ..sentencing the accused (petitioner) under section 323 I.P.C., to pay a fine of Rs. 25 by his order dated...............

The humble petition of Accused (petitioner)

Most Respectfully Sheweth :—

(1) That the complainant trespassed into the courtyard of the petitioner presumably with a view to commit an offence as he had a dagger in his hand.

(2) That the petitioner apprehending that the complainant was about to attack him struck the complainant a blow with a stick on his head and that this was done by your petitioner in the exercise of his right of private defence.

(3) That the complainant denied the occurrence and alleged that he was assaulted by the petitioner in front of his house.

(4) That the learned Magistrate refused to examine some respectable witnesses, e.g., (here give names) who came to the courtyard of your petitioner's house just after the occurrence.

(5) That your petitioner timely served summons upon those witnesses but that on the date of hearing those witnesses did not turn up and your petitioner prayed for issue of Warrants of arrest against those witnesses but that this prayer was refused by the learned Magistrate.

Your petitioner prays that your Honour may be pleased to call for the record and on a consideration of the facts and circumstances of the case be pleased to refer the case to the Hon'ble High Court recommending that the convic-

tion of your petitioner may be quashed and the case be sent back for retrial.

Your petitioner further prays that the payment of fine be suspended pending the hearing of the matter.

And your petitioner, as in duty bound, shall ever pray.

Note :—Similar application may be made before the District Magistrate also. But if any one of the revisional Courts (the District Magistrate or the District Judge) rejects the prayer, the application cannot be renewed before the other Court[1].

No. 57. In the High Court of Judicature at Fort William in Bengal (*Criminal Revisional Jurisdiction.*)

In the matter of an application under section 439 of the Code of Criminal Procedure.

X *Petitioner—Second Party.*

vs.

Y *Opposite Party* (complainant) *First Party.*

In the matter of an application against an order dated............in a proceeding u/s 133 Cr. P. C., being Case No..........of 1937 of the Court of Mr...............
.........Magistrate First class of............in the District of..................

To

The Hon'ble SIR LANCELOT SANDERSON, Kt., K. C., (Bar-at-Law), Chief Justice and his Companion Judges of the Hon'ble Court.

1. *In re Karpura Sundaram*, 17 M. L. J. 153.

The humble petition of petitioner X.

Most Respectfully Sheweth :—

1. That in a Proceeding (case No.........of.........) in the Court of Mr...............a First class Magistrate, the learned Magistrate by his order dated......directed that the *halat* should remain open and free for public use and that the petitioner should remove the obstruction.

2. That an application filed by the petitioner in the Court of the Sessions Judge of.........for referring the matter to the High Court was disallowed by the learned Judge on...............

3. That there is a Local Board road along the village...........and the complainant made an opening into the road and kept it open for some days and then filled it up. An enquiry was instituted and as a result of the enquiry the Local Board ordered the prosecution of the complainant who at that stage obtained permission to place a bridge over the opening.

4. That the complainant Opposite Party filed a petition under sec. 133 Cr. P. C. on............on the allegation that the Second Party unlawfully obstructed a boat passage by throwing earth on the passage near the Local Board road, before the Sub-Divisional Officer who, on receipt of the report from a Local Board member who was deputed to make an enquiry, passed the following order :—"Seen report. This is not a matter which calls for action under sec. 133 Cr. P. C."

5. That the District Magistrate was moved by the

complainant, opposite party who on hearing both sides, himself drew up proceeding under sec. 133 Cr.P.C., against the petitioner, directing him to remove the obstruction within 7 days or to appear before Magistrate Mr..................to show cause why the order should not be enforced.

6. That the petitioner denied the existence of any public right on the alleged boat passage and alleged that no boat passage over the disputed land ever existed, and that the *gopats* were not public roads.

7. That the learned Magistrate Mr.................... made no enquiry into the matter, nor adopted any other proceeding as comtemplated in sec. 139A Cr. P. C., and passed an order on...........that the *halat* should remain open for public use and directed the petitioner to remove the alleged obstruction.

8. That being aggrieved by the afore-said order your petitioner begs to move the Hon'ble Court in its Revisional Jurisdiction on the following amongst other grounds :—

Grounds.

(*i*) That the order complained of was bad in law, *ultra vires* and without jurisdiction.

(*ii*) That the order of the Magistrate was bad in law in as much as the District Magistrate had no Jurisdiction to order proceedings to be drawn up under sec. 133 Cr. P. C. in his Revisional Jurisdiction against an order of the Sub-Divisional Officer and that the whole proceeding based on the illegal order of the District Magistrate was bad in law.

(iii) That the order of the learned Magistrate

....................was illegal, irregular and improper in view of the fact that the procedure adopted by the Magistrate was in direct contravention of the provisions of sec. 139A, Cr. P. C.

(*iv*) That the order complained of is not warranted on the evidence on the record and in the circumstances of the case.

(*v*) .. ..

(*vi*)........ .. . .

And your petitioner prays that your Lordships may be pleased to call for the record of the case and issue a rule upon the District Magistrate...........and upon the opposite party ....to show cause why the afore-said order complained of should not be vacated or your Lordships may be pleased to pass such other order as the circumstances of the case may demand.

And your petitioner, as in duty boudd, shall ever pray.

Affidavit.

I........son of...........by occupation........resident of.........thana........District.........do hereby solemnly affirm and say as follows :—

1. That I am the petitioner and as such I am fully conversant with the facts of the case,
2. That the facts stated in the above petition are true to my knowledge.

....

Prepared in my office. *Signature of petitioner.*

Signature.................. ..

Date..................

Advocate.

Solemnly affirmed this the.........day of...... ....1937.

Signature.............................. ....

Date............................

....

Commissioner of Affidavit.

Note. Where there is a denial of the existence of the public right it is the duty of the Magistrate to inquire into the matter and come to a conclusion under the provisions of Sec. 139A, and on the result of his conclusion would depend the question whether he should stay proceedings or should proceed under Sec. 137 or 138, Cr. P. C[1].

No. 58. In the High Court of Judicature at Fort William in Bengal.

(*Criminal Revisional Jurisdiction.*)

In the matter of an application under section 439 of the Code of Criminal Procedure.

Petitioner...Kiron Chandra Mukherji (2nd Party)

vs.

Opposite Party...Subodh Chandra Ghosh (1st Party).

In the matter of an application against an order of Mr. S. K. Bose Deputy Magistrate of Faridpur dated............prohibiting the second party from interfering with a certain right of way under section 147 Cr. P. C.—an application for revision of the order was rejected by the Sessions Judge of Faridpur on......

1. *Rahmaddy Patwary v. Hassan Ali Jamadar*, 30 C. W. N. 648.

To

The Hon'ble SIR LANCELOT SANDERSON,
Kt., K. C., (Bar-at-Law)

Chief Justice and his Companion Judges of the Hon'ble Court.

The humble petition of petitioner Kiron Chandra Mukherji.

Most Respectfully Sheweth .—

(1) That a petition was filed by the First Party before Mr. S. K. Bose, Deputy Magistrate of Faridpur, District Faridpur, on ....complaining of an alleged obstruction of a path way by the Second Party and consequent likelihood of a breach of the peace, and that on ....the learned Magistrate passed the following orders : "To *Elaka* Police for enquiry and report by..............."

(2) That the report by the Police was submitted on ....and that on .. ..the learned Magistrate passed the following order on the body of the petition: "Issued notice on Kiron Chandra Mukherji to show cause why he should not be dealt with under section 107 Cr. P. C. Fix............"

(3) That on...............the learned Magistrate was pleased to pass the following orders : "Heard parties and seen documents. Draw up proceedings under sectin 147 Cr. P. C., fixing..............."

(4) That the learned Magistrate recorded evidence and passed an order on.........under section 147 Cr.P.C. prohibiting the second party from interfering with the exercise of the right claimed by the First Party.

(5) That an application for revision of the order

was made to the Sessions Judge of Faridpur who rejected the same on..................

(6) That being aggrieved by the afore-said order petitioner Kiron Chandra Mukherji (Second Party) begs to move the Hon'ble Court in its revisional jurisdiction on the following amongst other grounds :—

Grounds.

(i) That the learned Magistrate acted without jurisdiction in drawing up proceedings under section 147 Cr. P. C. after having ordered issue of notice upon th Second Party under section 107 Cr. P. C.

(ii) That the learned Magistrate acted without jurisdiction in drawing up a proceeding under section 147 Cr. P. C. because more than three months had expired between the date of the alleged obstruction on ....and the date of the institution of the proceeding on.........and there was no breach of the peace.

(iii) That the learned Magistrate failed to consider the effect of the recent Civil Court decree (Exhibit 2) between the First and the Second parties & others regarding the alleged right claimed by the opposite party.

(iv) That the order of the learned Magistrate is otherwise erroneous.

(v)..

And your petitioner prays that your Lordships may be pleased to call for the record of the case and issue a rule upon the District Magistrate of Faridpur and upon the opposite party to show cause why the afore-said order complained of should not be vacated.

And your petitioner, as in duty bound, shall ever pray.

Affidavit.

I, Kiron Chandra Mukherji, son of..................by occupation..................resident of....................thana ....District....................do hereby solemnly affirm and say as follows :—

1. That I am the petitioner and as such I am fully conversant with the facts of the case,

2. That the facts stated in the above petition are true to my knowledge.

....

Signature of petitioner.

Prepared in my office.

Signature..........................

Date......................

Advocate.

Solemnly affirmed this the.........day of.........1936.

Signature.................... *Date*......................

Commissioner of Affidavit.

Notes :—Where on receipt of a petition regarding an alleged obstruction of a pathway and alleged likelihood of a breach of the peace, the Magistrate immediately ordered a Police enquiry but proceedings under section 147 Cr. P. C. were actually drawn up more than three months after and a final order made there on, the order under section 147 Cr. P. C. was held to be without jurisdiction[1].

No. 59. Petition of objection to a person chosen by lot as a Juror. (Section 277 Cr. P. C.).

In the Court of Sessions Judge of..................

Case No.........of.........Under section.........I. P. C.

Emperor vs. *Accused*....................

1 *Ram Chandra Acharjee* vs. *Aditya Chandra Pal* 30 *C.W.N.* 863.

In the matter of an objection to the selection of Juror........................

The humble petition of..................accused in the above case,

Most Respectfully Sheweth :—

Mr....................................a resident of ....
P. S....................who had been summoned as a Juror has been chosen by lot just now to be on the Jury which is to try the case of your petitioner, and your petitioner begs to object to his selection on the following grounds :—

Grounds.

1. That the Juror above-named, is a relation of the deceased who is alleged to have been murdered, and as such has a predisposition naturally born of a large mass of hearsay that clustered around the incident of murder.

2. That the afore-said gentleman is deeply interested in the prosecution—in fact the first informant happens to be a first cousin of his.

3. That he has not the required amount of education which may enable him to follow the case intelligently.

Your petitioner, therefore, prays that Mr............... chosen by lot as a Juror may be relieved and replaced by another.

And your petitioner, as in duty bound, shall ever pray.

Note.—The objection should be taken either verbally or in writing immediately the Juror is chosen by lot and his name is called out and he appears in Court

No. 60. Petition by a Juror or an Assessor after attending a Sessions Court for exemption to serve as a Juror or Assessor for a particular period.
(Sec. 330 Cr. P. C.).

In the Court of the Sessions Judge of...... ....
case No..........of................Under Section 302 I. P. C.

Crown vs. *Accused*............

In the matter of prayer for exemption to serve as a Juror for some time to come.

The humble petition of Ramanath Ghosh, M. B. who served as a Juror (or Assessor) in the above case,

Most Respectfully Sheweth :—

(1) That your petitioner served as a Juror (or Assessor) in the above case—the hearing of which lasted for 45 days.

(2) That your petitioner is a medical practitioner and sustained a heavy pecuniary loss during the period he served as a Juror (or Assessor) and most of his patients engaged other medical men to attend them in the meantime, and your petitioner apprehends that he has very likely lost those patients.

(3) That your petitioner has, besides, sustained severe mental strain in carefully following the evidence in such a big trial.

Your petitioner prays that your Honour may be pleased to excuse your petitioner from attendance at the next periodical Sessions.

And your petitioner, as in duty bound, shall ever pray.

Note.—The High Court may relieve any special Juror from liability to serve again as a Juror for twelve months.

(Vide para 2 to section 330 Cr. P. C.)

No. 61. Petition by a Juror or an Assessor for remission of fine. (Section 332 Cr. P. C.).

In the Court of the Sessions Judge of..................
Case No.........of..............Under Section 325 I. P. C.

Crown vs. *Accused*.......................

In the matter of prayer for remission of fine imposed upon a Juror.

The humble petition of..........................a Juror in the afore-said case,

Most Respectfully Sheweth :—

(1) That your petitioner served as a Juror for 3 days in the above case but was prevented from attending the Court on the fourth day due to a sudden attack of choleric diarrhoea.

(2) That your Honour has been pleased to impose a fine of Rs. 50/- on your petitioner for non-attendance on the fourth day.

(3) That your petitioner begs to file with this petition a certificate from Mr...............................
....M. B., a registered medical practitioner who attended your petitioner on............

(4) That your petitioner did not wilfully absent himself from the Court on the fourth day of trial, that is, on.........................

Your petitioner prays that your Honour may be pleased to excuse your petitioner from his liability to pay the fine imposed.

And your petitioner, as in duty bound, shall ever pray.

Note.—The Court can remit or reduce the fine under section 332 Cl. (4) Cr. P. C. No appeal lies from the order of the Sessions Judge imposing fine on a Juror or Assessor[1].

No. 62. Petition by a proposed Juror or an Assessor for exemption of liability to serve as a Juror or Assessor. (Section 320 Cr. P. C.).

In the Court of the District Judge,
(District Magistrate,)
Faridpur.

In the matter of prayer for exemption to serve as a Juror.

The humble petition of..............................

Most Respectfully Sheweth :—

(1) That from the list hung up it appears that your petitioner has been chosen to serve as a Juror in the district of Faridpur for the year 1935-36.

(2) That your petitioner is aged 65 years. Besides, he is short of hearing for the last 10 months.

(3) That the general health of your petitioner does not permit him to bear the strain of following the evidence closely for a prolonged period.

Your petitioner, accordingly, prays that his name may be removed from the list of Jurors and he may be exempted from serving as a Juror.

And your petitioner, as in duty bound, shall ever pray.

N. B.—This application is made under section 320 Cr. P. C. For grounds of exemption—read the said section.

1. *In the matter of Gour Surun Dass, 8 W. R. 83.*

No. 63. Petition by a lunatic's guardian informing the Court of Sessions that the accused is a lunatic.

(Sections 464 & 465 Cr. P. C.).

In the Court of the Sessions Judge

of.......................

Case No. 32 of 1920 under section 302 I. P. C.

Crown *vs.* *Accused* Hari Dome.
Son Kalu Dome.
Village Patipur.
Thana Mirpur.

In the matter of petition informing the Court that the accused is a lunatic.

The humble petition of Kalu Dome father of the accused lunatic Hari Dome,

Most Respectfully Sheweth :—

(1) That the accused is petitioner's son and that this petition is being made on behalf of Hari Dome the accused for information of the Court that he is a lunatic.

(2) That the accused who is living with your petitioner is a lunatic for the last 7 years and that he is of unsound mind and incapable of making his defence.

Your petitioner prays that the Court may be pleased to get the accused examined by the Civil Surgeon of the District or by such other Medical Officer as the Local Government may direct and on examining the Medical Officer and on taking such evidence as may be adduced, may be pleased

to try, with the aid of Jurors, the question about the insanity of the accused before proceeding with the trial.

And your petitioner, as in duty bound, shall ever pray.

Note :—This application can be made either before the Magistrate or before the Sessions Court. The Sessions Judge will try the question of lunacy with the aid of the Jury or Assessors, as the case may be, and will come to a finding on the point. It is for the Crown to prove that the accused is capable of making his defence[1].

No. 64. Petition by an European British Subject praying that the majority of Jurors for his trial shall be European or American. (Section 275 Cr. P. C.).

In the Court of the Sessions Judge of...........

Case No. 172 of 1935. Under section 302 I.P.C.

Crown *vs.* *Accused* W. T. John.

In the matter of petition of accused W. T. John in the above case,

Most Respectfully Sheweth :—

1. That the petitioner (accused) has been charged under section 302 I.P.C. on the allegation that he intentionally and with the knowledge of causing death assaulted and thereby caused death of one Dhipu Bera, a cooly of Monihari tea garden of which the accused is an Asst. Manager.

2. That the afore-said case was started at the instance of Dhipu Bera's brother Ramdin Bera.

3. That the petitioner is an European British Subject and that he apprehends that unless the trying

1. *Emp* vs. *Gopi Mohan Saha.* 51 Cal. 827.=26 Cr. L. J. 276.

Jury has an European or American majority the verdict will be tainted with bias resulting in injustice.

Your petitioner prays that your Honour may be graciously pleased to try him with the aid of a Jury majority of which would be either Europeans or Americans.

And your petitioner, as in duty bound, shall ever pray.

Note.—If the accused be an Indian and the complainant be an European British Subject, the accused can also make an application for selection of Jury the majority of which shall be Indians.

No. 65. Petition of appeal under Section 443 Cr. P. C. to Sessions Judge by European British Subject against Magistrate's finding in a proceeding under Chapter XXXIII Cr. P. C.

In the Court of the Sessions Judge of.................

Case No.......of.........under sectian 326 I.P.C.

Crown at the instance of		
Afizaddi Molla........... ..		*Accused* T. C. John,
Son............................	*vs.*	Son of..
Village		of.............. ....
Thana..................		Thana........ ....

In the matter of an appeal by T. C. John, rejecting his claim to be tried under the special provisions of Chapter XXXIII Cr. P. C.

The humble petition of T. C. John accused in the above case,

Most Respectfully Sheweth :—

I. That the petitioner, who is an European British Subject and is charged with under section 325, I. P. C.

for causing grievous hurt to the complainant, claims to be tried under the special provisions of Chapter XXXIII Cr.,P. C.

2. That the learned Magistrate, on an investigation into the claim of your petitioner to be treated as an European British Subject, rejected the prayer.

3. That the petitioner being aggrieved by the afore-said order of the learned Magistrate rejecting his prayer, begs to prefer this appeal on the following amongst other grounds :—

Grounds.

(i) For that the learned Masistrate should have accepted the evidence of status adduced by your petitioner.

(ii)..

(iii)..

And your petitioner prays that your Honour will be pleased to call for the record and after hearing your petitioner and the Crown pleader be pleased to set aside the learned Magistrate's order and direct that the petitioner be tried under the special provisions of Chapter XXXIII of the Criminal Procedure Code.

And your petitioner, as in duty bound, shall ever pray.

Note :—An affidavit by a person who knows the nationality of the accused is admissible in evidence in support of the claim put forward before the Magistrate[1].

No. 66. Transfer application to the District Magistrate. (Section 527 Cr. P. C.).

In the Court of the District Magistrate, Sylhet.

1. *Gallagher vs. Emp.* 54 Cal 52 = 28 Cr. L. J. 481 (482).

Case No............of........under Section.........I.P.C.

Emperor *vs.* *Accused* Hari Das Pal
at the instance of.................... Son of.....................
complainant .... Village.....................
Ram Dhupi.............................. Thana ....

In the matter of the petition of accused Hari Das Pal for transfer of the above case from the file of Mr. S. Bose, Deputy Magistrate, Sylhet, to the file of some other Magistrate.

The humble petition of Haridas Pal accused,

Most Respectfully Sheweth :—

(1) That the afore-said case was started on......... at the instance of the complainant Ram Dhupi and the said case is still pending in the file of Magistrate Mr. S. Bose for trial.

(2) That the said case is a simple one but the learned Magistrate is adjourning it from time to time and your petitioner is being put to considerable difficulty and inconvenience.

(3) That the learned Magistrate while holding a local enquiry in the said case strongly expressed an opinion before an officer ot the accused that there are boundary marks and other indications on the spot to show that the complainant's party was in peaceful possession of the land.

(4) That the complainant's son-in-law Mr. A. N. Ghose is an intimate friend of the Magistrate and that they both were seen by the accused and many persons going to-gether to cinema and other public places of entertainments.

(5) Your petitioner apprehends that he will not get a fair trial at the hands of Magistrate Mr. S. Bose.

Your petitioner prays that your Honour after calling for the record and hearing both the parties be pleased to transfer the case to the file of some other Magistrate.

And your petitioner, as in duty bound, shall ever pray.

Note. This petition as it contains allegations about the conduct of a public servant should be supported by an affidavit of a responsible person who knows the facts of the case (*Section 539 (A) Cr. P. C.*)

No. 67. An application to High Court for transfer of a case. (Section 526 Cr. P. C.).

In the High Court of Judicature, at Fort William in Bengal.

(*Criminal Revisional Jurisdiction*).

Accused petitioner Ram Chandra Das

vs.

Complainant opposite party Bhola Nath Kundu

In the matter of an application for transfer of case No. 5 of 1925 pending at Kandi, in the District of Murshidabad, before Mr. P. K. Roy a Magistrate with 1st class powers, from the Court of the said Magistrate to the file of some other Magistrate.

To the Hon'ble,

Sir John Rankin, Kt., K. C., Bar-at-law,
Chief Justice,
and his Companion Judges of the Hon'ble Court.

The humble petition of Ram Chandra Das, accused petitioner,

Most Respectfully Sheweth :

(1) That the complainant opposite party brought a case U/S 500 I. P. C., against your petitioner on the

allegation that at a public meeting of the ratepayers of the Kandi Municipality held at Kandi on 21.1.25, the accused petitioner defamed the opposite party who is the Vice-Chairman of the local Municipality by saying that he was dishonest in his dealings with the Municipal Funds.

(2) That the said case is pending before Mr. P. K. Roy for more than 6 months, but that the learned Magistrate is not trying to expedite the hearing of the case and is allowing frequent adjournments to the opposite party on flimsy grounds.

(3) That your petitioner has come to know and is satisfied on enquiry that the said Magistrate and the complainant are on friendly terms. And that shortly before the alleged case was started the complainant opposite party entertained the Magistrate in his own house.

(4) That on 3 9.25, an intermediate date fixed for hearing of the case, the learned Magistrate openly gave out in Court that the accused petitioner was a man of violent temper and that he heard complaints against him from the people of the locality.

(5) That the learned Magistrate at first released the accused petitioner on a bail of Rs. 200/- but that on a subsequent date the said Magistrate directed the petitioner to furnish security for Rs. 1000/- for his appearance in Court.

(6) That the accused petitioner moved the District Magistrate U/S 528 Cr. P. C. for transfer of the case but that his prayer was rejected by the learned District Magistrate on 20.10.25.

(7) That your petitioner being aggrieved by the afore-said order of the District Magistrate begs to move your Lordships on the following amongst other grounds.

Grounds.

(1) For that under the circumstances as stated above the learned District Magistrate should have transferred the case to the file of some other competent Magistrate for trial.

(2) For that there is reasonable apprehension in the mind of your petitioner that he will not get a fair and impartial trial if the case be tried by the afore-said Magistrate, Mr. P. K. Roy.

Your petitioner prays that your Lordships may be pleased to call for the record of the case and to issue a rule upon the District Magistrate, Murshidabad and upon the opposite party to show cause why the afore-said case should not be transferred from the file of Mr. P. K. Roy to the file of some other first class Magistrate of the District.

And that your Lordships may be further pleased to pass such order as may seem fit and proper in the circumstances of the case and that pending the hearing of this application further proceedings in the case before the trial Court may be stayed.

And your petitioner, as in duty bound, shall ever pray.

Affidavit.

I, Ram Chandra Das, son of Late Hari Nath Das, by occupation money-lender, resident of Kandi in the district of Murshidabad do hereby solemnly affirm as follows :—

(1) That I am the petitioner in the case and that I am fully aware of the facts stated in this petition.

(2) That the facts stated in the petition are true to my knowledge.

Signature of petitioner.
Prepared in my office

23.12.25. Sd/- N. Sanyal,
Advocate.

Solemnly affirmed this the 19th day of December, 1925 before me.

Sd/- M. Hyder,
19.12.25. *Commissioner of Affidavit.*

Note :—High Court does not transfer a case unless there be reasonable ground for the apprehension. There is no hard and fast rule as to the circumstances which may give rise to an apprehension in the mind of the petitioner. The petitioner cannot possibly prove actual bias on the part of the Magistrate. He can only place certain facts and circumstances from which the High Court has to draw an inference. If the Magistrate expresses a strong opinion against the accused. the case deserves to be transferred. A Magistrate who has first hand knowledge about the facts of the case from sources outside the record, is not competent to try the case.

Note :—On the ground of friendship a case cannot be transferred but along with other circumstances there may be a reasonable appprehension in the mind of the accused that he will not get a fair trial. If the allegations contained in the petition which is sworn are found to be untrue, the deponent of the affidavit is liable to be criminally prosecuted.

No. 68. Petition by a guardian of a minor child for maintenance against father.
(Sec. 488 Cr. P. C.).

In the Court of..Magistrate
of..

Case No............Under Sec. 488 Cr. P. C.

Petitioner (minor) (X)		*Opposite Party* (Z)
Son of.....	*vs.*	Son of........... ....
Village		Village ....
Thana.....................		Thana..................

Through his next friend
(maternal uncle) (Y)..................

Son of.. ....
Village ....
Thana.. ....

In the matter of maintenance of minor (X) son of opposite party (Z) u/s 488 Cr. P. C.

The humble petition of the minor (X) through his maternal uncle (Y) Most Respectfully Sheweth :—

1. That the opposite party (Z) lawfully married the petitioner's mother according to the Hindu rites on...(*give date*); your petitioner (X) is the son of the opposite party born of that.........marriage.

2. You petitioner's mother, died on.........Since his mother's death the petitioner (X) has been living under the care and protection of his maternal uncle. (Y).

3. The opposite party, (Z) although a man of means, took no notice of the petitioner since his mother's death except by casual enquiries. Your

petitioner's maternal uncle (Y) went out of job last year and it is somewhat difficult for him now to maintain his family. Your petitioner, the minor son of the opposite party, is now 11 years old and is already in school.

4. Your petitioner's maternal uncle (Y) met the opposite party last month, told him about his difficulties arising out of the loss of his employment, and asked him to come forward with some help every month for the education and up-bringing of his son, the petitioner.

5. The opposite party, it appears, is seeking to avoid the liability for the maintenance and education of his child, the petitioner, and has not so far remitted any sum although repeatedly requested.

6. The opposite party (Z) is a man with a monthly income of Rs. 300/- from salary and house rent and your petitioner would put down the negligence of the opposite party to a life of dissipation now led by him.

Your petitioner prays that the Court may be pleased to issue notice on the opposite party and after taking necessary evidence be pleased to order the opposite party (Z) to pay a monthly allowance of Rs. 50 for the maintenance and education of the petitioner.

And your petitioner, as in duty bound, shall ever pray.

N. B. Read for the law on the subject Part II Chapter XII pp. 180-184.

No. 69. Petition by wife under section 488 Cr. P. C. for maintenance—against husband.

In the Court of.......................................Magistrate of.........................

Case No............Under Sec. 488 Cr. P. C.

Petitioner X (*Wife*)		*Opposite Party* Y (*Husband*).
Daughter of.........	*vs.*	Son of..............................
Village................		Village..............................
Thana..................		Thana..............................
Occupation...........		Occupation..........................

In the matter of petition for maintenance of petitioner X from her husband Y.

The humble petition of X (wife)

Most Respectfully Sheweth .—

1. Your petitioner X is the married wife of the opposite party, Y, the marriage between them was solemnised according to the Hindu rites on...............

2 The opposite party Y is a clerk on the staff of Messrs.................................holding a responsible position and drawing a salary of Rs. 175/- per month.

3. The opposite party, Y, severely assaulted the petitioner X on..................and drove her away from his house on..................in presence of several gentlemen of the locality.

4. That the opposite party Y leads a life of drunkenness and debauchery. He is besides a man of uncertain temperament and would flow into rage, in season and out of season, without any reason whatsoever. He is lost to all sense of decorum and would use extremely filthy language.

5. Your petitioner, after she was driven out of the house by the opposite party, came over to her father's place on the same day and has been staying with him.

6. The opposite party was served with a pleader's notice to send your petitioner Rs. 25/- every month for her maintenance but with no result. Having regard to the violent temper of, Y and still more his inhuman way of beating your petitioner she does not venture to come over to the place of the opposite party.

Your petitioner prays that your Honour may be pleased to issue notice on the opposite party and after taking evidence of both sides be pleased to order the opposite party to pay the petitioner maintenance at the rate of Rs. 25/- per month.

And your petitioner, as in duty bound, shall ever pray.

Note :—For law on the subject, please refer to Part II Chapter XII pages 180—184. After reading the same draw up the application.

No. 70. Objection of a husband in a maintenance case. (Section 488 Cr. P. C.).

In the Court of Mr.........................Dy. Magistrate exercising First Class powers at....................

Case No.........of.........Under Section 488 Cr. P. C.

Sm. Radharani Dutt..................*Petitioner*

vs.

Sukumar Dutt...........................*Opposite Party.*

In the matter of an application under section 488 Cr. P. C.

(*Statement of objection of the opposite party.*)

The humble petition of opposite party......husband of the petitioner in the above case,

Most Respectfully Sheweth :—

1. The statements made by the petitioner in her application affecting the conduct, character and means of the opposite party are untrue. The only true statement in the petition being that she is the opposite party's legally married wife.

2. The opposite party would beg leave to state below a true and correct version of the facts and circumstances which led to the unfortunate split with the petitioner.

(a) The opposite party is a quiet sort of man and was never cruel to the petitioner or assaulted her as alleged.

(b) The petitioner is a lady of extremely bad culture and still worse temper. She would be hard on all the relations of the opposite party, and quarrel, in a disreputable way, with the opposite party for no earthly reason.

(c) The opposite party could not put up with the conduct of the petitioner when on...... she passed all limits and assaulted the opposite party's widowed sister-in-law. This met with good protest from the opposite party who in his turn chastised her. This was too much for the petitioner and her overbearing manners. She lost her self-control, and created a scene with her glib tongue and a pack of lies, and left for her father's place.

(d) The opposite party is willing to maintain

the petitioner if she comes over to his place and lives with him decently as his wife.

(e) The opposite party is a man of slender means earning Rs. 50/- a month with a good number of dependants.

In the circumstances stated above your petitioner would pray that your Honour may be graciously pleased to hear evidence of both parties and reject the petition for maintenance.

And your petitioner, as in duty bound, shall ever pray.

No. 71. Petition by husband for reducing the allowance ordered to be paid to wife. (Section 489 Cr. P. C.).

In the Court of..... ....Magistrate
of..... ....

Case No.........of............Under Section 488 Cr. P. C.

Petitioner (Wife)		*Opposite Party* (Husband)
Daughter of..................	*vs.*	Son of ....
Village........................		Village ....
Thana		Thana..........................
Occupation............		Occupation ....

In the matter of petition of opposite party for reducing the allowance ordered to be paid to his wife.

The humble petition of Opposite Party............

Most Respectfully Sheweth :—

(1) That the opposite party was ordered to pay Rs. 25/- p. m. as allowance to his wife, the petitioner

in the above case by your order No..........dated......... passed in case No..........of 1929.

(2) That the opposite party faithfully carried out the order and paid the allowance to the petitioner all along.

(3) That the opposite party who was an employee in the office of Messrs...........................on a monthly salary of Rs. 175, lost his job at the time of the general reduction made in the office in January last.

(4) That in consequence the opposite party is in extreme pecuniary dfficulty at present, and is unable to pay the full amount of the allowance ordered to the petitioner, his wife.

The opposite party prays that in the afore-said circumstances the monthly allowance ordered to be paid by the Opposite Party to his wife may be reduced to Rs. 10/- p. m.

And your petitioner, as in duty bound, shall ever pray.

Note :—Similar petition for cancelling the order for maintenance may be filed by the husband if subsequent to the order the marriage is dissolved by a decree of a Civil Court or if it is held in a regular suit that there was no valid marriage between the parties. The Magistrate will enquire into the allegations made and pass orders suitable in the circumstances of the case. If after the order passed in the maintenance case the parties enter into a separate agreement that will amount to a change in the circumstances and an application can be made for modifying the order in terms of the agreement made[1].

No. 72. Petition by wife for enforcing maintenance allowance ordered by Court. (Section 490 Cr. P. C.).

In the Court of.................. ....Magistrate

of......... ....

1. *Prabhu Lal vs. Rami* 25 All. 165=22 A. W. N. 224.

Case No.........of............Under section 488 Cr.P.C.

Petitioner (Wife)		*Opposite Party(Husband)*
Daughter of		Son of........................
Village..........................	*vs.*	Village..........................
Thana..........................		Thana ....

In the matter of petition by the wife for enforçing the order as to the payment of maintenance.

The humble petition of petitioner (wife)...........

Most Respectfully Sheweth :—

(1) That the Opposite party was ordered by your Honour by your order No..........dated.........passed in case No.... ....to pay a monthly allowance of Rs. 50/- to his wife, the petitioner.

(2) That since the order the opposite party has not paid a copper to the petitioner in terms of the afore-said order. A copy of the order which was furnished to the petitioner by the Court is attached herewith.

Your petitioner prays that after issuing notice to the opposite party your Honour may be pleased to enquire into the allegations made in the petition, and on being satisfied that the allegations are true may be pleased to attach the properties of the opposite party mentioned in the *Schedule* annexed hereto for enforcing payment or in the alternative the Court may be pleased to issue a warrant for the arrest of the opposite party and put him into prison for such a period as the Court may deem proper.

SCHEDULE—List of Properties.

And your petitioner, as in duty bound, shall ever pray.

Note.—The law provides for imprisonment after default is made. The order for imprisonment may be passed when the husband wilfully neglects to pay the amount of maintenance orderd to be paid.[1]

No. 73. Petition tendering apology in a contempt proceeding. (Section 484 Cr. P. C.).

In the Court of....................................Magistrate of........................

Case No.........of............Under Section .... I. P. C. or Cr. P. C.

Complainant		*Accused*
Son of		Son of ....
Village	*vs.*	Village ....
Thana		Thana ....

In the matter of an application for pardon in a contempt proceeding.

The humble petition of...................... .....a witness for the defence in the above case,

Most Respectfully Sheweth :—

(1) Your petitioner was cited as a witness by the accused in the above case and your Honour was pleased to summon him for attending Court to day.

(2) That while under cross-examination the lawyer for the prosecution put your petitioner a question affecting his position as a gentleman with a view to annoy him.

1 *Sidheswar Teor* vs., *Gyanada Dasi* 22 Cal, 291.

(3) Your petitioner felt very much hurt at the insinuation which was absolutely false and naturally lost his temper.

(4) Your Honour was pleased to remark and cautioned your petitioner about his conduct but as the lawyer for the prosecution still pursued the same line of cross-examination which your petitioner believes was solely directed to humiliate him, your petitioner inspite of the caution held out to him by the Court flew into a rage and made an insulting remark affecting the conduct of the prosecution lawyer and your Honour as the presiding Judge for allowing the vexatious questions to be put.

(5) Your Honour took exception to this conduct of your petitioner and was pleased to draw up a proceeding under sectiou 480 Cr. P. C. for contempt for committing an offence punishable under section 228 I.P.C. against him and he was called upon to show cause why he should not be punished.

(6) Your petitioner is a man of weak nerves and is of neurotic temperament. He sincerely regrets the incident and offers unqualified apology to the lawyer and to the Court for what had happened.

Your petitioner, accordingly, prays that your Honour may be graciously pleased to accept the apology of your petitioner and to grant him pardon.

And your petitioner, as in duty bound, shall ever pray.

Note—The Proceeding in a contempt case can be drawn up under section 480 Cr. P. C. for offences mentioned in that section. The Court can excuse the accused under section 484 Cr. P.C. on tendering adequate apology.

No. 74. Petition by a witness to get back. documents filed by him.

In the Court of....................................Magistrate
of.........................

Case No............of............Under Section.........I. P. C.

The humble petition of..................................
a witness in the above case,

Most Repectfull Sheweth :—

(1) That the above case was disposed of by your Honour on.......................

(2) That your Honour's judgment was confirmed by the Appellate Court on.................

Your petitioner prays that the documents noted in the schedule filed by him in the above case may be ordered to be returned to him.

Schedule of documents filed :

Signature of the witness.

No. 75. Petition for getting copies of judgment etc. by an accused free of costs. (Section 371 Cr. P. C.).

In the Court of....................................Magistrate
of.......................

Case No............of............Under Section 148 I. P. C.
(For rioting with deadly weapon), disposed of on..............

Crown *vs.* *Accused*
Son of ....
Village ....
Thana ....

In the matter of the application for a copy of judgment.

The humble petition of..................accused in the above case,

Most Respectfully Sheweth :—

(1) That your petitioner has been convicted by your Honour in the above case and sentenced to undergo 2 years R. I.

(2) That your petitioner is quite innocent of the charge. He was implicated in the riot by the complainant's party out of grudge over possession of a plot of homestead land close to your petitioner's house.

(3) That your petitioner has been advised to prefer an appeal to the District Judge of............from the judgment convicting and sentencing your petitioner.

(4) That a copy of the judgment is necessary for filing with the petition of appeal.

Your petitioner prays that your Honour may be pleased to direct the office to grant to your petitioner a copy of the judgment free of costs at an early date.

And your petitioner, as in duty bound, shall ever pray.

Note :—In summons cases copies of judgment cannot be granted free of charge and the applicant will have to pay necessary charges. This application can also be made before the Sessions Judge for getting copies of judgment and heads of charges to the Jury free of costs.

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CHAPTER III

AFFIDAVITS.

Rules.

The affidavit shall contain the name of the Court, names of parties to the case or proceeding, number and year of the case ; if there be no case, the affidavit should be entitled,—"In the matter of the petition of............of............". Every affidavit should be divided into paragraphs and every para should be numbered. The person making the affidavit has to be fully described by giving his name, father's name, residence, profession, age. The affidavit must be confined to such facts as the deponent is able of his own knowledge to prove except on interlocutory application, on which statements on his belief may be admitted, provided that the grounds thereof are stated. Upon any application evidence may be given by affidavit at the instance of either party but the Court may order the attendance of the deponent for cross-examination. If the deponent making the affidavit is not personally known to the commissioner of the affidavit, the deponent is identified by any person known to the officer of the Court. A literate man must read and sign the affidavit. To an illiterate man the commissioner of affidavits explains the contents of the affidavits.

Different High Courts have framed rules regarding swearing of affidavits. The rules are practically the same in substance. The rules framed by the High Courts at Allahabad and Rangoon are reproduced below :—

Rangoon Rules.

The officer administering the oath to the declarant of an affidavit should first make the declarant take the oath or affirmation. Then he should make the declarant repeat the whole of the statement written in the affidavit as coming from him. Then the declarant should sign the affidavit and lastly the officer administering the oath should sign and date it.

Every affidavit to be used in a Court of Justice should be entitled. "In the Court of... .. ..at..........." naming the Court. If there is a case in the Court, the affidavit in support of or in opposition to an application respecting it must also be entitled, "In the case of..."

If there is no case in Court the affidavit should be entitled, "In the matter of the petition of..........."

Every affidavit containing any statement of fact shall be divided into paragraphs and every paragraph should be numbered consecutively as nearly as may be confined to distinct portion of the subject.

Every person other than a complainant or accused, in a case in which application is made, making an affidavit shall be described in such a manner as will serve to identify him clearly, that is to say, by the statement of his full name, the name of his father, his profession or trade, and the place of his residence.

When the declarant in any affidavit speaks to any fact within his own knowledge, he must do directly and positively using the words "I affirm (or make oath") and say".

When the particular fact is not within the decla-

rant's own knowledge, but it is stated from information obtained from others, the declarant must use the expression, "I am informed' (and if such be the case should add)" and verily believe it to be true", or he may state the source from which he received such information. When the statement rests on facts disclosed in documents or copies of documents procured from any Court of justice or other source the deponent shall state what is the source from which they were procured and his information or belief as to the truth of the facts disclosed in such documents. Every person making an affidavit, if not personally known to the commissioner shall be identified to the commissioner by some person known to him and the commissioner shall specify at the foot of the petition or of the affidavit (as the case may be) the name and description of him by whom the identification is made, as well as the time and place of the identification and of the making of the affidavit.

If any person making an affidavit is ignorant of the language in which it is written or appears to the commissioner to be illiterate or does not fully understand the contents of the affidavit, the commissioner shall cause the affidavit to be read and explained to him in a language which he understands. If it is necessary to employ an interpreter for this purpose, the interpreter shall be sworn to interpret truly. When an affidavit is read and explained as herein provided the commissioner shall certify in writing at the foot of the affidavit that it has been so read and explained and that the declarant seemed perfectly

to understand the same at the time of making the affidavit. When an interpreter is employed the commissioner shall state in his certificate the name of the interpreter and the fact that he was sworn to interpret truly.

In administering oaths and affirmations to declarants the commissioner shall be guided by the provisions of the Indian Oaths Acts, 1873.

Allahabad rules.

Affidavits shall be entitled, "In the Court of at..." (naming such Court). If the affidavit be in support of or in opposition to an application respecting any case in the Court, it shall also be entitled, in such a case. If there be no such case it shall be entitled, "In the matter of the petition, of..............., Affidavits shall be divided into paragraphs and every paragraph shall be numbered consecutively and as nearly as may be, shall be confined to the distinct portion of the subject, Every person making any affidavit shall be described therein in such a manner as shall identify him clearly, and where necessary for this purpose, it shall contain the full name, the name of his father, his caste or religious persuasion, his rank or degree in life, his profession, calling, occupation, or trade and the true place of his residence. Unless it be otherwise provided, an affidavit may be made by any person in cognizance of the facts deposed to. Two or more persons may join in an affidavit; each shall depose separately to those facts which are within his own knowledge, and such facts shall be stated in separate paragraphs.

When the declarant in any affidavit speaks to any fact within his own knowledge he must do so directly and positively, using the words "I affirm" or "I make oath and say".

Except in interlocutory proceedings affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove. In interlocutory proceedings, when the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant shall use the expression, "I am informed" and if such be the case "and verily believe it to be true" and shall state the man and his address and shall sufficiently describe the person from whom he received such information.

When the application or the opposition thereto rests on facts disclosed in documents or copies of documents procured form any Court of justice or other source, the declarant shall state what is the source from which they were procured., and his information and belief as to the truth of the facts disclosed iu such documents.

When any place is referred to in an affidavit it shall be correctly described. When in an affidavit any person is referred to, such person, the correct name and address of such person, and such further description as may be sufficient for the purpose of the identification of such person, shall be given in the affidavit.

Every person making an affidavit for use in a Civil Court shall, if not personally known to the

person before whom the affidavit is made, be identified to that person by some one known to him, and the person before whom the affidavit is made shall state at the foot of the affidavit the name, address and description of him by whom the identification was made as well as the time and place of such identification.

No verification of a petition and no affidavit purporting to have been made by a *pardanashin* woman who has not appeared unveiled before the person before whom the verification or the affidavit was made, shall be used unless she had been identified in manner already specified and unless such petition or affidavit be accompanied by an affidavit of identification of such woman made at the time by the person who identified her. The person before whom an affidavit is about to be made shall before the same is made, ask the person proposing to make such affidavit if he has read the affidavit and understands the contents, and if the person proposing to make such affidavit state that he has not read the affidavit or appears to be illiterate, the person before whom the affidavit is about to be made shall read and explain, or cause some other competent person to read and explain in his presence, the affidavit to the person proposing to make the same and when the person before whom the affidavit is about to be made is thus satisfied that the person proposing to make such affidavit understands the contents thereof, the affidavit may be made. The person before whom an affidavit is made, shall certify at the foot of the

affidavit the fact of the making of the affidavit before him and the time and place, when and where it was made and shall for the purpose of the identification mark and initial any *Exhibit* referred to in the affidavit.

If it be found necessary to correct any clerical error in any affidavit, such correction may be made in the presence of the person before whom the affidavit is about to be made and before, but not after, the affidavit is made. Every correction so made shall be initialled by the person before whom the affidavit is made, and shall be made in such a way as not to render it impossible or difficult to read the original word or words, figure or figures, in respect of which the correction may have been made.

The rules made by the other High Courts are not reproduced as the above rules will be sufficient to show the particulars necessary for drawing up and swearing affidavits. As stated above, the rules in principle are same and aim at proper identification and insist on stating how the matter referred to in an affidavit, is known to the declarant.

Affidavit at private residence :—Affidavits may be sworn at the private residence of any sick man and a fee is levied by all District Courts of a Special Commissioner deputed for the purpose.

Swearing of Affidavits regarding conduct of a Public Servant :—Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or person mentioned in section 539 Cr. P. C. When an application

is made to any Court containing allegations against public servants, evidence may be given by means of affidavits.

CHAPTER IV.

Costs of Affidavits.

Affidavits required to be filed in Courts are exempt from stamp duty but other affidavits should be written on requisite stamp. In Assam, Bengal, Bombay, Central Province, Madras, Punjab, and in the United Provinces a stamp duty of Rs. 2 is levied on affidavits.

The following affidavits are exempt from stamp duty. (1) Affidavits or declaration in writing when made as a condition of enlistment under the Indian Articles of War. (2) For the immediate purpose of being filed or used in any Court or before an officer of any Court, or (3) for the sole purpose of enabling any person to receive any pension or charitable allowance.

Even though the affidavits meant for filing in pending cases are exempt from stamp duty they require a Court fee of Re 1 under the rule framed by the Calcutta High Court. **An extract from the rule framed by the Calcutta High Court is reproduced below ;—**

"The charge shall be paid by means of Court fee stamp..." But "no charge should be made in respect of the following affidavits."

(1) Affidavits made by a process-server deposing as to the manner of service of a process.

(II) Affidavits in proof of service or as to avoidance of service made by persons who accompany such process-server.

(III) Affidavits made by Public Officers in virtue of their office.

CHAPTER V.

Form of Affidavit.

(English Form)

In the Court of.................................
Case No...............................of 19......................
Complainant..................vs. *Accused*.................
I, Ram Chandra Ghose complainant son of Hara Chandra Ghose of village...............Thana Baranagar, Pargana Kasipur, Zilla 24 Parganas, aged 32, by profession a trader, do hereby solemnly declare.

(1) That I am the complainant in the case referred to above.

(2) That the accused in a *Solenamah* filed in suit No..........of 19............of Court admitted my title to the land in dispute, and that the said suit was diposed of on............ ;

(3) That I have filed a certified copy of the said *Solenamah* but the record of the original case referred to in para 2 is necessary fo proving the original *Solenamah.*

I hereby affirm and declare that the particulars set forth above are true to my knowledge.

Signature of Complainant.

Identified by

Signature of the person identifying the deponent.

No. 1. Affidavit proving illness of a witness to be filed with an application for adjournment :
(Sec. 344 Cr. P. C)

In the Court of the Magistrate of..............................
Case No. 36 of 1934 under sec.........I. P.C. or Cr. P.C.

Complainant...............		*Accused*........................
Son of........................		Son of........................
Village........................	*vs.*	Village......... ....
Thana..........................		Thana........................
Occupation.........		Occupation ....

In the matter of prayer for adjournment of case No. 36 of 1934.

I,.....................son of...................., aged............ years, by caste...................., by profession........... of village.................Police Station....................of District..............hereby make oath and say :—

(1) That in the above case I am the complainant.

(2) That I got summons served on Sheikh Nabi Ali of Golpiya, thana, Halisahore to depose for me as a witness in this case.

(3) That I went to the house of the said witness and found him suffering from small-pox and unable to move about.

(4) That the said witness being a witness to the occurrence is a material witness in this case.

The facts stated in paras 1 to, 4 are true to my knowledge. ....

Signature of the deponent.

Known to me.

Siganture of the identifier.

Solemnly affirmed this the day of 20th of November 1937 before me. I certify that I read over and explained the contents to the declarant and that the declarant seemed perfectly to understand the same.

... .

Commissioner of Affidavits.

Date—20-11-37

Hour—1 p. m.

No. 2. Affidavit for proving service of summons when serving-officer is not present.

(Sec. 74 Cr. P.C.)

[This affidavit is sworn by the serving peon and sometimes by the identifier also.]

(Name of the Court, parties etc., as in Number I)

I,..................son of etc., (as in Number 1).

(1) That I am a process-server of this Court. This is true to my knowledge.

(2) That being accompanied by identifier Sheikh Hobibulla of Azimgang, I went to the house of the accused (here name of the accused) in village,........... on the.................day of..................of 1935 at about ....P. M. and found the said accused present in his house. This is true to my knowledge.

(3) That I served the summons on the accused in the manner hereafter stated. (Here state the mode of service.) This is true to my knowledge.

(4) That the accused..........................accepted a copy of the summons and put a signature on the

reverse of the duplicate copy of the summons. This is true to my knowledge.

Signature etc.,
as in Number 1.

No. 3. Affidavit for calling a record in a proceeding under sec. 145 Cr. P. C. (Necessary according to the High Court Circular Orders.)

(Description of Court etc., as in No. 1).

(1) That I am a *Gomastha* of the complainant. I am throughly acquainted with the facts of the case. This is true to my knowledge.

(2) That it is necessary in the above Proceeding that the record of the title suit No.......of the year ....of.........Court disposed of on.........be called for to prove the First Party's title to the disputed land as this has been denied by the Second Party in this Proceeding. This I verily believe to be true.

(3) That in title suit No................of the year ....of.................Court referred in para 2 between the First Party and the Second Party, the Second Party in his written statement admitted that the First Party was owner of a 6 ans. share in the disputed property. The First Party has this day filed in this Court a certified copy of the said written statement. This is true to my knowledge.

(4) That it will materially help the First Party to prove his case if the afore-said written statement be proved and admitted in evidence, and that the record of the case mentioned above is necessary for proving the original written statement. This is true to the best of my information and belief.

(5) That title suit No..............of..................
Court mentioned in para 2 was disposed of on............
...............and that the record was despatched to the District Judge's Record room according to the rules. This is true to the best of my information.

Signature, etc., as in Number 1.

No. 4. Affidavit for examining a witness on commission. (Sec. 503, Cr. P. C.).

(Name of the Court, parties etc., as in Number 1).

I..........................son of..........................as in Number (1).

Solemnly declare that,

(1) I am complainant in the above case and that I am aware of the facts connected with the said case. This is true to my knowledge.

(2) That the examination of witness Sreemati Sarala Dasi is necessary in this case for the ends of justice and that the attendance of the said witness cannot be procured without considerable expense disproportionate to the importance of the case as the said witness is residing at Delhi 500 miles away from this Court. This is true to the best of my knowledge and information.

(3) That the said witness will identify the ornaments criminally misappropriated by the accused. This is true to the best of my belief.

(4) That for the ends of justice a commission should be issued for examination of the said witness, in terms of sec. 503 Cr. P. C. This is true to the best of my belief.

Signature etc., as in Number (1).

Note—The application for examination on commission can be made only to a Presidency Magistrate, a District Magistrate, a Court of Sessions or to a High Court for further particulars refer to Part V. Chapter X. Pages 650 to 652.

No. 5. Affidavit for appointment of a Receiver in respect of attached property. (Sec. 146 Cr. P. C.).

(Name of the Court, parties etc., as in Number 1)

I,..................son of etc...............(as in Number 1)

(1) That I am first party in the above proceeding under section 145 Cr. P. C. This is true to my knowledge.

(2) That your Honour by your order dated......... was pleased to hold that the evidence adduced was not sufficient for determining the question of possession and was pleased to attach the property in dispute. This is true to my knowledge.

(3) That an application is being made to your Honour this day for appointment of a Receiver for management of the attached property. This is true to my knowledge.

(4) That no Receiver of the property, the subject matter in dispute, has been appointed by any Civil Court. This is true to my information and belief.

(5) That it will take some time before a competent Court will determine the rights of the parties to the disputed property. This is true to my information and belief.

(6) That unless a Receiver be appointed for the proper management of the property, the party entitled to the property will suffer considerable loss. This is true to the best of my belief.

Signature etc., as in Number 1.

N. B. For note see Part I, Chapter VIII, page 83.

No. 6. Affidavit to be filed with an application for local inspection U/S. 539 (B) Cr. P. C.

(Name of the Court, parties etc., as in Number 1).

I.................................. ....son of etc.................................. as in Number 1.

(1) That for a proper understanding of the evidence and the relative positions of the different plots in dispute, it is necessary that the Court should locally inspect the properties in dispute. This is true to the best of my belief.

(2) That the Court will be able to judge for itself by holding local inspection the distances of the disputed plots from the temple of *Siva* close by, about which witnesses for the prosecution and defence have given different versions. This is true to the best of my belief.

Signature etc.,
as in Number 1.

N. B.—*For notes see Part II, (B), Chapter III, Page 260.*

No. 7. Affidavit to be filed with a petition praying for treating the accused as a First offender. (Sec. 562 Cr. P. C.).

(Name of the Court, parties etc., as in Number 1).

(I son of etc ; as in Number 1)

(1) That I am father of the accused in the aforesaid case, and that I was present at the time of the birth of the accused. This is true to my knowledge.

(2) That the accused ...., my son, was born on..............................and that he is aged this

day 15 years 7 months 9 days. This is true to my knowledge.

Signature etc, as in Number 1.

N. B.—*For notes see Part II, Chapter XVI, Pages 197—198.*

No. 8. Affidavit to be filed with an application on behalf of a lunatic informing the Court that the accused is of unsound mind. (Sec. 464 Cr. P. C).

(Name of the Court, parties etc, as in Number 1)

(I son of etc., as in Number 1)

(1) That I am elder brother of the accused, Hari Charan Paul of the above case. This is true to my knowledge.

(2) That the accused is aged 27 years and that he is of unsound mind for the last 10 years. This is true to my knowledge.

Signature etc., as in Number 1.

N. B.—*For notes see Part II, Chapter XV, Pages 189—190.*

No. 9. Affidavit to be filed with an application under section 528 (A) Cr. P. C. claiming to be tried as an European British Subject.

(Name of the Court, parties, etc., as in Number 1)

(I son of etc., as in Number 1)

(1) That I am grand-father of the accused. Mr. T. Powell. This is true to my knowledge.

(2) That I was born in England of English parents. This is true to my knowledge.

Signature etc., as in Number 1.

Note : This affidavit by itself may not be sufficient to prove the status of the accused[1]. *For further notes see Part II, Chapter XIV Pages 185—188.*

No. 10. Affidavit to be filed with an application for restoration of property stolen. (Sec. 517 Cr. P.C.).

Name of the Court, parties etc., as in Number 1)

(I son of etc., as in Number 1).

(1) That in the afore-said case the accused Hiralal Dome, who was my servant stole my watch No. 5879 manufactured by Messrs West End Watch & Co., Ltd. This is true to my information.

(2) That the said accused was convicted by this Court on............and that the orders of conviction and sentence passed were confirmed on appeal on............ This is true to my knowledge.

(3) That an application is being made to-day to this Court for restoration of the said watch to the complainant. This is true to my knowledge.

(4) That the said watch is the property of the complainant. This is true to my knowledge.

Signature etc., as in Number 1.

N. B.—*For notes see Part II (B), Chapter III, Page 261.*

Affidavit on petition to be filed.

An Affidavit may be sworn on the petition to be filed. Models of petitions verified by affidavits have already been given before. *Vide pages 945 & 949.* This obviates the necessity of swearing a separate affidavit.

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1. *Thomas* v. *Emp.* 53 Cal. 746.

The form for swearing an affidavit in the petition is given below :—

Form.

I, Ramchandra Das, son of Harinath Das, by occupation money-lender, resident of Kandi, in the District of Murshidabad do hereby solemnly affirm as follows :—

(1) That I am a petitioner in the case and that I am fully aware of the facts stated in this petition.

(2) That the facts stated in the petition are true to my knowledge.

Prepared in my office,

23. 11. 25. Sd/- N. Sanyal,

Advocate.

Solemnly affirmed this the 18th day of December 1925 before me.

Sd/- M. Hyder,

18. 12. 25. *Commissioner of Affidavit.*

APPENDIX.

PART IX.

PROCESS FEES, EXPENSES OF WITNESSES AND COPYING CHARGES.

APPENDIX

PART IX

CHAPTER I

BEHAR AND ORISSA.

Process fees in Criminal cases. (Behar and Orissa rules)

1. The fees hereinafter mentioned shall be chargeable for serving and executing process to which the fees are respectively attached, Viz :—

	Rs.	As.	P.
(1) Warrant of arrest.			
For the warrant in respect of each person	1	8	0
(2) Summons—			
For the summons in respect of one person, on of the first two persons residing in the same place.	0	12	0
In respect of every additional person named therein.	0	6	0
(3) Proclamation of absconding party under section 87 of the Criminal Procedure Code—			
For the proclamation.	3	0	0
(4) Proclamation for witness not attending (section 87)—			
For the Proclamation.	0	12	0
(5) Warrant of attachment—			
For the warrant.	1	8	0
Where it is necessary to place officers in charge of property attached for each officer so employed per diem.	0	6	0
(6) Written order—			
For the order.	1	8	0
Injunction—			
For the injunction.	1	8	0

Note—The provisions of the clauses III and IV of section 31, Act VII of 1870, and of Rules 3 and 4 below, apply also to injunction. Criminal Officers are however, reminded, that injunctions in proceedings not connected with offences are not chargeable with any fee. An injunction under section 143. Criminal Procedure Code, would not carry any fee (Rule No 10 of 26 September 1882.)

(8) Notice—	Rs	As.	P.
For the notice.	1	8	0

(Bombay Rules)

Fees chargeable for serving processes in case of certain offences.

(Bombay Rules (Criminal)

The fees chargeable for serving and executing processes issued by the Court any Magistrate in the case of offences other than offences for which Police Officers may arrest without a warrant, shall be those shown in the Appended Table below :—

1. In the cases falling within chapters 19, 20 and 21 of the Indian Penal Code :—

(i)	For every summons or notice	0	4	0
(ii)	For every warrant of arrest	1	0	0
(iii)	For every proclamation for absconding party or witness (Criminal Procedure Code, sections 87 and 88)	1	0	0
(iv)	For every warrant of attachment	1	0	0

2. In all other cases the fee chargeable for every process shall be one-fourth of the fee shown in the above table.

Proviso :—No fee shall be levied on any process issued upon the complainant of any Public Officer acting as such Public Officer.

The Court may remit the process-fees in whole or in parts, in cases other than those falling under chapters 19, 20 and 21 of the Indian Penal Code, whenever the Court is satisfied that the complainant or the accused has not the means of paying them.

CENTRAL INDIA.

Process fees in Civil and Criminal cases.

(in Central India)

1. The Courts shall for the purpose of levying fees for the service of processes be devided into three grades :—

Grades.	Courts.
First...........................	The Courts of the Agent to the Governor General in Central India.
Second...........................	First Appellate Courts.
Third...........................	District Court, Court of small causes and other Civil Judges and Courts of Magistrates.

Fees for the service of processes shall be levied in each grade of Court according to the following scale, namely :—

Nature of process.	Courts of 1st grade. Rs. As. P.	Courts of 2nd grade. Rs. As. P.	Courts of 3rd Grade. Rs. As. P.
Summons, notice or other processes not being a warrant of arrest or attachment ...	2 0 0	1 0 0	0 4 0
Warrant of arrest ...	4 0 0	2 0 0	0 8 0
Warrant of attachment ...	4 0 0	2 0 0	2 0 0

Separate process and separate fee for each person summoned.— A separate process shall be issued for each person summoned or arrested, or upon whom a notice is served; and subject to the rules IV and V a separate fee shall be charged for each process.

Exception in respect of process issued in parties :—(V) When any process other than warrant of arrest or of attachment is to be served upon four or more persons being parties, one fee only shall, according to the scale in Rule II, be charged in respect of the first four processes and an additional fee, according to the subjoined scale shall be charged for each process to be served in excess of four, provided that the aggregate amount of the fee leviable under this rule shall not exceed the maximum prescribed for each grade of Court.

Nature of process.	Courts of 1st grade. Rs. As. P.	Courts of 2nd grade. Rs. As. P.	Courts of 3rd grade. Rs. As. P.
Rates of additional fee ...	0 8 0	0 4 0	0 2 0
Maximum ...	15 0 0	10 0 0	0 2 0

Mode of payment of Court-fees on processes :—VI The stamps received for Court-fees shall be applied to the application upon which the process is to be issued.

Service of process issued by or to Courts in British territory or by or to Courts established or continued by the Government of India or by or to Courts in Native States in Central India :—VII A process issued by any Court in British territory whether of Civil, Revenue, or Criminal jurisdiction or by any Court established or continued by the Governor-General in Council or by any Civil or Revenue Court in Native States in Central India shall be served free of charge by any Court in the said areas, if it be certified on the process that proper fee has been levied under the rules in force in the territory in which the Court issuing the process is situated when any Court in the said areas transmit a process for service or execution to any Court beyond its jurisdiction a certificate shall be endorsed on the process that the fee chargeable under Rule II or Rule V as the case may be, has been levied........ ..."

When process-server may travel by Railway :—Ordinarily process-servers should travel on foot when proceeding to serve or execute processes, but in special cases, the Judge of the Court issuing the process, may permit the journey to be made by Railway. In such cases the permission should be in writing and the railway fare should be paid from judicial contingencies, and not charged to the person at whose instance the process is issued.

Power of Court to remit process fees :—IX A Court may remit the process fee, in whole or in part whenever it is satisfied that the complainant or the accused has not the means of paying them.

Exemption from payment of process fees :—No fee shall be chargeable for any process of a Criminal Court issued through the Police in Cognizable cases, or for any process issued by a Court of its own motion in any case whatsoever or for any process issued upon the complainant of a public officer, acting as such officer. *See Gazette of India, dated 27-9-1913, part II pp. 1797-99.*

Madras Rules. Process fee in Criminal cases :—On and after 1st February 1890 all payments for the service of process by the Criminal Courts, subordinate to the High Court in the case of offences other

than offences triable by summons case procedure, for which the Police may arrest without warrant shall be collected according to the rates fixed in the subjoined schedule :—

Schedule—Criminal Courts :—	Rs.	As.	P.
(1) Summons to defendant.	0	8	0
And for every additional defendant if applied for at the same time and if resident in the same neighbourhood ...	0	4	0
(2) Summons to a witness and for every additional witness if applied for at same time, and if witness resides in the same neighbourhood	0	4	0
(3) Warrant of arrest	0	12	0
(4) Notice, order, injunction, or warrant not otherwise provided for	0	8	0

N.B.—(1) If a process is to be served or executed within a radius of six miles from the Court-house, half the above rates only are to be charged. The Judge or every Court shall determine what villages are within the above radius, and a list of such villages shall be notified in a conspicuous place in the Court-house

(2) When a warrant remains unexecuted for fifteen days after its delivery to the officer entrusted with its execution, an additional fee at the same rate shall be levied from the party at whose instance the warrant was issued for every fifteen days or portion of fifteen days until return is made, provided that the delay in executing the said warrant is not attributable to the officer of the Court.

(3) No fees shall be levied on processes issued upon complainants by public servants or officers or servant of a railway company acting in their official capacity, which under section 19 CL. XVIII of the Court-fees Act 1870, are exempt from complainant fees.

Refund of Court fees :—(Bengal rules). Application for refund or renewal shall be made in the printed form given below (which shall be obtained from the officer in charge of the Forms Department by indent in the usual way, containing the particulars required by law, with counterfoil including the receipt to be given by the Collector, and the receipt for money or fresh stamps, as the case may be given by the party. These forms are to be obtained from the *Nazir* or Stamp-Vendors at one pice per sheet. Stamp-Vendors

may obtain the forms from the Collector's office at the rate of eighty copies per rupee for retail to the public at one pice per sheet and, while such printed forms are available, they shall be used by applicants :—

Form of Application for refund or renewal.	**Applicants receipt.**	**Collector's receipt.**
1. Name of applicant. 2. Description of stamp (i.e., impressed or denoted) 3. Value 4. Date of the purchase. 5. Where and from whom purchased. 6. Date of the stamp becoming spoiled or unfit for use. 7. Manner in which the stamp has become spoiled or unfit for use. 8. Whether the application is for refund or renewal I do here by declare that the statements made above are true to the best of my knowledge and belief. .... (*Signature of applicant*) 10. Date fixed for disposal. 11. Date of disposal. 12. Final order. 13. Initial of Collector.	Received from the Collector of............the sum of Rs............only, being the value of...... ....spoiled stamps, less one anna in each rupee of the nominal value. .... (*Signature*) (*Date*) Received from the Collector of............... fresh stamp as follows :- Number | Value | Amount Total. .... (*Signature of applicant*) (*Date*)	Received an applicant with............ spoiled stamps, value Rs...... paying for refund renewal there of under section......Act VII of 1870. Of the......... ......stamps, value Rs...... are herewith returned as inadmissible. Orders will be passed on .... (*Signature of the Collector*) (*Date*)

Refund in cases of hardship :—In Government order No. 19-T dated the 14th August, 1874, it was decided that it is within the power of Government to waive its own rights, and to refund the value of judicial stamps if it thinks proper to do so. It was also laid down that refunds should not, as a rule be allowed, but that they should be permitted only under circumstances of special hardship. each case being separately reported for the orders of Government. In accordance with this decision the Government of Bengal has hitherto dealt

with such applications for refunds except in the case of probates and letters of administration regarding which there are specific provisions in sections 19A to 19B of the Court-fees Act, 1870. The Government of Bengal has ruled that the power of granting refunds of judicial stamps (in case not expressly provided for in the rules of Government) should in future be exercised by the Board, who will continue to be guided by the principles prescribed in 1871—*Vide Letter No. 210 T. S. R. Government of Bengal, Financial Dept., dated the 21st June, 1910.*

CHAPTER II.

Expenses of witness in Criminal cases :—(Bengal rules)

"The Criminal Courts are authorised to pay by these rates the expense (a) of complainants or witnesses whether for the prosecution or for the defence (1) in cases in which the prosecution is institution or carried on by or under the orders or with the sanction of the Government, or of any Judge, Magistrate or other public officer, or in which it shall appear to the Presiding Officer to be directly in furtherance of the interests of the public service ; and (ii) in all cases intered in column 5 of the Schedule II appended to the Criminal Procedure Code is not bailable and (b) of witnesses in all cases in which they are compelled by the Magistrate of his own notion to attend under the provisions of section 540 of the Code.

2. If a witness is summoned at the instance of the complainant or accused under section 244 of the Code, his expenses shall not be withheld from him except on the ground of failure to do his duty as a witness when summoned.

3. (1) For the purpose of computing the expenses which the Criminal Courts are authorised to pay under these rules complainants and witnesses shall be divided into two classes, namely :—

(a) labourers and ordinary cultivators and other persons of similar class and

(b) persons of better position. and the allowanse shall ordinarily be a diet and allowance, which may be paid to persons coming under class (b) on demand by them, and to persons in class (a) as a general rule.

2. Such allowance shall be calculated for each class of daily rates within, and never exceeding, the maximum limit specified below opposite the territorial description of the Court in which the complainant or witness appears :—

	class (a) per diem.	class (b) per diem.

1. Courts in the districts of Nadia, Murshidabad, Jessore, Khulna and Midnapore .. ..7 annas to Rs. 5/-.

II. Courts in the rest of the districts in the presidency 8 annas to Rs. 5/-.

Explanation :—The rates fixed in this rule are maximum and are intended to meet the cost of meals for one day. In every case, therefore, the Court should consider the circumstances of the individual and local conditions and grant a reduced allowance in circumstances and localities where the actual expenses and all start of the maximum rate. In cases where no meal is taken from home, on when only one meal is taken from home, or when only one meal is taken, no allowance or reduced allowance, as the case may be should granted.

4 (1) Complainants and witnesses performing the journey or part of the journey by rail, steamer or train may be allowed their actual fares each way according to the class by which persons of their rank and station in life would ordinarily travel. In determining the class by which a person would ordinarily travel, regard should be had to the standard laid down in section V of the Travelling Allowance Rules published in the Calcutta Gazette Extraordinary, December 23, 1921.

(2) Charge for toll at ferries will be allowed at the authorised rates to the extent to which they have been actually incurred.

(3) Other travelling expenses will be given only when the journey could not have been performed an proof on in the case of persons whose age, position and habits of life render it impossible for them to walk. In such cases, in addition to the allowance permitted by the preceding rules, travelling allowance should be given at the following rates :—

(a) When journey is by any kind of conveyance by road, the actual reasonable conveyance charge up to a maximum limit of 4 annas a mile.

(b) In the districts where the usual modern of travelling is by water, the actual expenses incurred for boat-hire up to a maximum of Rs. 2/- per diem.

(4) In hill districts, where it is customary for respectable persons to be accompanied by a man carrying their baggage, when such a person is summoned for distance of more than five miles, he may be allowed the actual cost incurred for the hire of one Coolie.

(5) If the Court is of opinion that any person following any trade or profession or engaged in any Commercial undertaking has suffered substantial loss by reason of his attendance as a witness or Complainant, he may be allowed, in addition to the diet money and travelling expenses permissible under the preceding rules compensation according to circumstances.

(6) Notwithstanding anything contained in these rules Government servants when summoned to give evidence in their public capacity shall receive no payment from the Court on account of travelling or halting allowance but shall be entitled to draw such allowance under the Civil Service Regulations on producing a certificate of attendance granted by the Court provided that—

(i) When a Government servant is required to give evidence in in his private capacity at a Court situated not more than five miles from his head quarters the Court shall be authorised, where it considers if necessary, and notwithstanding anything contained in this rule, to pay the actual travelling expenses incurred.

(ii) When the salary of the Government servant as summoned does not exceed Rs. 10/- per mensem he shall be paid his expenses by the Court.

(7) Notwithstanding contained in rules 3 and 4 whenever the Court requires the expenses of a Government officer summoned as witness in his official capacity, to be deposited in advance, the term "expenses" shall be interpreted to mean the travelling and halting allowance admissible under the Civil Service Regulations.

(9) Officers will be held responsible that parties or witnesses are brought to Court together as far as possible, so as to save expense.

The hire of more than one boat shall not be allowed in one case unless the Presiding Officer is satisfied that the witnesses could not have arranged to come together.

(10) The number of days for which diet allowance should be granted will be determined by the officer ordering payment in each case.

(11) For this purpose and for regulating the reimbursement of tolls paid, a table shall be prepared and kept in each Court, showing the distance of each thana from the Suddar Station and subordinate stations, the number of intermediate ferries to be crossed and authorised rates of charges for tolls at each of these ferries, the existence or absence of roads or waterways being also noted in the table-Calcutta Gazette, 1222, Part. 1. August 9. pp. 1522-1524.

CHAPTER III.

COPYING CHARGES.

Rules framed by the Calcutta High Court.

C. O. No. 1 of 24th January 1890.

1. "**Charge for copies** :—(a) In all Criminal Courts, a uniform charge shall be made for the preparation of copies, whether certified, at the rate of 4 annas per folio. This term it is to be carefully explained to all subordinate officers, merely denominates a certain quantity of manuscript; the folio to consist of 150 words English, or of 300 words Vernacular, 4 figures counting as one word.

(b) This charge shall be levied by means of an impressed stamp of 4 annas on each of paper corresponding with the folio to be provided by the applicant for a copy. Each of these sheets shall contain a folio that is, 150 words English or 300 words vernacular. As there are 25 lines in each sheet, each line shall contain as nearly as possible 6 words English or 12 words vernacular.

(c) All copies, whether certified or uncertified, must before issued be examined by salaried officer. The copies themselves will in all cases, be made by section writers, who will be remunerated at the rate of 2 annas per folio.

(d) Uncertified copies may be converted into certified copies upon the application of the person to whom they have been granted; and upon his filing with such application the necessary 12 annas Court-fee stamps required by law.

(e) Certified copy must be "certified to be a true copy," must bear the seal of the Court and must be signed in full.

Urgent Copy.

(i) When an applicant requires his copies to be furnished on the day of application, an extra fee of one rupee (or, if the compies exceed four folios, of 4 annas per each folio) shall be charged on all copies so furnished, to be had from him by a Court-fee stamp, which should be affixed to the application for the copy and be entered in the Register for Court-fee stamps. Care, however, is to be taken that other applicants for copies do not materially suffer by the arrangement. If the granting of other copies be much delayed by this rule, an extra hand ought to be told off to furnish other copies,

(ii) Under ordinary circumstances, the time for furnishing the copies required shall not be later than 1 P. M. of the fifth open day after the presentation of the application.

(iii) When a copy of judgment, sentence, or order is granted, the following particulars must invariably be recorded in the back of the copy itself, and in the form given below for the information of of the Appellate Court (section 12, Act IX of 1908)—

(a) Date of application for the copy. (b) Date of delivery of requisite stamped sheets. (c) Date on which the copy was ready for delivery. (d) Date of making over the copy to the applicant.

Cost of Copy.

(IV) in the case of certified copies, the Court-fee chargeable under the Court-fees Act should be levied by affixing the necessary stamp to the first folio of the copy.

(V) In the case of maps and plans, no general rule can be laid down. In each case a charge will have to be fixed with reference to the difficulty or intricacy of the work to be done. Half will be paid to the copyist and half credited to Government on account of examination fees and cost of materials.

In Criminal cases, parties are entitled to obtain copies, certified or uncertified, or any portion of the record of trial. This ruling covers such Police-papers as may be made use of as evidence at the trial. As regards other Police-papers, the High Court can pass no order :—High Court 1972 (1880) Complainants must pay copying fees, whenever they want copies. But an accused is, under section 371 of Act V of 1898, entitled, in cases other than summons cases to a copy of the judgment absolutely free of charge, and in plain paper :—High Court. Proceedings, May, 1881.

Strangers can they get copies ? As a general rule, copies of exibits in a Criminal case should certainly not be granted to persons who are strangers to the case. A Magistrate should use his discretion in each case, acting on the general principle that no copies should be given to a stranger without a good cause being shown-High Court Proceeding 1882.

CHAPTER IV.

PAYMENT OF (1) EXPENSES OF COMPLAINANT OR WITNESS (2) DIET MONEY (3) COMPENSATION.

Payment by Magistrate of expenses of complainant or witnesses : Subject to any rule made by the Local Government,****any Criminal Court may if it thinks fit, order payment on the part of the Government, of the reasonable expenses of any complainant or witness attending for the purpose of any enquiry, trial or other proceeding before such Court[1].

Court's power to pay diet money to witness :—Section 544 does not empower a Court to order payment of diet money to witnesses produced by the parties. That power is vested in the Court under the general rules framed by the High Courts[2].

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1. Section 544.
2. *Kamal Mandalini* vs *Paramasukh Chakrabutty*. 29 C. W. N. 1033.

Payment of expenses or compensation out of fine :—Whenever a Criminal Court imposes a fine or confirms in appeals, revision or otherwise a sentence of fine, or a sentence of which fine forms a part. the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied,

(a) in defraying expenses properly incurred in the prosecution ;

(b) in the payment to any person of compensation for any lossor injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court :

If the fine is imposed in a case which is subject to appeal, no such payment can be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal[1].

Payment to complainant of Court fees paid by him in noncognizable cases :—In a non-cognizable case the Court while convicting the accused may direct him to pay to the complainant costs of Court fees paid on the petition of the complainant, process fees etc. This can be done in addition to penalty imposed. The Court may further order that in default of the payment the accused shall suffer simple imprisonment for a period not exceeding 30 days. All recoveries ordered to be paid by Court is recoverable as a fine.

Copies of proceedings—the Judgment and the order :—If any person affected by the judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the Jury or of any order or deposition of other part of the record, he shall on applying for such copy be furnished there with.

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1. Section 545 Cr. P. C.

THE END.

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PART X

CHAPTER I.

প্রথম অধ্যায়

ফৌজদারী আদালতে সাধারণতঃ যে যে দরখাস্ত দাখিল হয় তাহার মুসাবিদা ও তৎসম্বন্ধীয় আইন ইংরাজী Part এ লিখিত হইয়াছে। এক্ষণে বাঙ্গালা দেশের আইন ব্যবসায়ীগণের ও তাঁহাদের মোহরারগণের সুবিধার জন্য ফৌজদারী আদালতে দাখিলী আবশ্যকীয় ৬০ খানি দরখাস্তের মুসাবিদা দেওয়া হইল।

দরখাস্ত সম্বন্ধীয় আইন ইংরাজী Part এ পাওয়া যাইবে। ডিষ্ট্রিক্ট ম্যাজিষ্ট্রেট্ ও ডিষ্ট্রিক্ট জজ আদালতে এবং মহামান্য হাইকোর্টে আপিল রিভিশন বা ট্রান্সফার জন্য যে সব দরখাস্ত করিতে হয় তাহা ইংরাজীতে লিখিত হয়। ঐ সকল দরখাস্তের বাঙ্গলা মুসাবিদা দেওয়া অনাবশ্যক।

যদি কোন স্থলে ডিষ্ট্রিক্ট্ জজ বা ডিষ্ট্রিক্ট্ ম্যাজিষ্ট্রেটের আদালতে দাখিল জন্য আপিল বা মোশন করিবার দরখাস্ত বাঙ্গালায় লিখা আবশ্যক হয় তাহা হইলে দরখাস্তের উপরে আদালতের নাম, মোকর্দ্দমার বিবরণ, পক্ষগণের নাম, মোকর্দ্দমার নম্বর ইত্যাদি লিখিয়া দরখাস্তের প্রথমে মোকর্দ্দমার সংক্ষিপ্ত বিবরণ দিয়া পরে কি কারণে দরখাস্ত করা হইতেছে তাহা সংক্ষেপে লিখিতে হইবে।

যে যে হেতুবাদে নিম্ন আদালতের রায় রহিত হওয়া উচিত বা যে যে কারণে মোকর্দ্দমার ডিশ্‌মিশের অর্ডার রদ করিয়া পুনর্বিচারের হুকুম হওয়া উচিত সেই সেই কারণ দরখাস্তে উল্লেখ করিতে হয়।

যদি মোকর্দ্দমা এক আদালত হইতে অন্য আদালতে transfer করিয়া বিচারের প্রার্থনা করা হয় তাহা হইলে যে আদালতে মোকর্দ্দমা দায়ের আছে, কি কি কারণে উক্ত আদালতে মোকর্দ্দমার সুবিচার হইবে না আশঙ্কা হইয়াছে তাহা বিশদভাবে লিখিতে হইবে।

দরখাস্তে লিখিত বিষয় যে সত্য আবশ্যক হইলে তাহা এফিডেভিড্ করিয়া প্রমাণ করিতে হয়।

দস্তখত

দরখাস্তের নীচে বা উপরের ডানদিকের কোণে—পক্ষ বা তাহার নিযুক্তীয় ক্ষমতা প্রাপ্ত উকিল বা মোক্তার বাবু দস্তখত করিবেন।

এই অধ্যায়ে সাধারণতঃ ফৌজদারী আদালতে যে যে দরখাস্ত দাখিল হয় তাহার তালিকা দেওয়া হইল।

List of applications ordinarily filed in Criminal Courts :—

MODELS OF PETITIONS (Bengali).

(A)

Re :—Information—Suspected commission of offence.

(1) An application to the Magistrate u/s 45 Cr. P. C.

Re :—Returning of Articles.

(2) Petition for returning articles found on an accused person at the time of his arrest. (Sec. 51 Cr. P. C.).

Re :—Claim Matters.

(3) Claim Petition. (Sec. 88 Cr. P. C.).

Re :—Searches.

(4) Petition for searching a particular place where stolen properties are supposed to have been kept.

(5) Petition for restoration of an abducted woman and for search. (Sec. 552 Cr. P. C.)

Re :—Applications u/s 110 Cr. P. C.

(6) In the matter of an application for drawing up proceedings u/s 110 Cr. P. C.

(7) Application u/s 122 Cr. P. C. in proceedings u/Secs. 107, 110 Cr. P. C. for proving that the surety produced by the petitioner is a fit person.

(B)

Re :—Public Nuisance.

(8) Petition under Chapter X, Cr. P. C. for removal of Public Nuisance. (Sec. 133, Cr. P. C.).

(9) Petition u/s 135 Cr. P. C. shewing cause to order passed u/s 133 Cr. P. C.

(10) Petition u/s 135 Cr. P. C. claiming appointment of a Jury.

Re :—Proceedings u/s 144 Cr. P. C.

(11) Petition under Chapter XI, Cr. P. C. for an immediate order in a case of apprehended danger. (Sec. 144 Cr. P. C.).

Re :—Proceeding u/s 145 Cr. P. C.

(12) Application for drawing up proceedings u/s 145 Cr. P. C,

(C)

Re : Petition of complaint, attendance of witnesses and trial etc.

(13) Petition of complaint filed in a Mofussil Court. (Sec. 200. Cr. P. C.).

(14) A short petition of complaint.

(15) Petition of complaint to Union Bench.

(16) Petition by an accused surrendering in Court.

(17) Statement of accused. (Sec. 342 Cr. P. C.).

(18) Petition for summoning witnesses. (Secs. 244 and 68 Cr. P. C.).

(19) Petition for issuing a warrant of arrest against a witness. (Sec. 75 Cr. P. C.).

(20) Petition for attachment of property of a witness. (Sec. 88 Cr. P. C.).

(21) Petition for examination of a witness on commission u/s 503 Cr. P. C.

(22) Petition of objection when a relevant question is disallowed by the Court.

(23) Petition of objection when an irrelevant question is allowed by the Court.

(24) Petition objecting to the admissibility of a document at the time of trial.

(D)

Re : Adjournment.

(25) Application for adjournment of a case. (Sec. 344 Cr. P. C.).

(26) Petition filed before a Subordinate Court for adjournment on the ground of moving the High Court for transfer of the case. (Sec. 526 Cr. P. C.).

Re :—Compensation.

(27) Application by complainant claiming compensation u/s 545 Cr. P. C.

Re :—Withdrawal of a case.

(28) Petition for withdrawal of complaint. (Sec. 248 Cr. P. C.).

(29) Petition by public prosecutor withdrawing prosecution. (Sec. 494 Cr. P. C.).

(E)

Re :—Compounding of offence.

(30) Petition for compounding an offence. (Sec. 345 Cr. P. C.).

Re :—First offender.

(31) Application u/s 562 Cr. P. C. for treating the accused as a first offender.

Re :—Security for time to pay fine.

(32) Petition for furnishing security for time for payment of fine. (Sec. 388 Cr. P. C.).

Re :—Restoration of property.

(33) Petition for restoration of property claimed by the applicant after conclusion of a trial. (Sec. 517 Cr. P. C.).

Re :—Furnishing security by deposit of money.

(34) Petition for making deposit of money instead of furnishing security. (sec. 513 Cr. P. C.).

Re :—Notifying address.

(35) Application notifying address of a convicted person. (*This is to be made after release*) (*Sec. 565 Cr. P. C.*).

(F)

Re :—Bail Matters.

(36) Petition for bail. (Sec. 426 Cr. P. C.).

(37) Petition for bail u/s 498 Cr. P. C.

(38) Bail petition before a Magistrate during police enquiry in a case.

(39) Bail petition before a Magistrate in a pending case.

Re :—Surety Matter—discharge of surety.

(40) Petition by a surety for his discharge. (Sec. 502 Cr. P. C.).

Re :—Bond—forfeiture of—remission of penalty.

(41) Petition for remission of penalty wholly or in part on forfeiture of bond. (Sec. 514 Cl. (5) Cr. P. C.).

Re :—Further enquiry, revision etc.

(42) Application for further enquiry regarding a complaint dismissed.

(43) Application u/s 437 Cr. P. C. for revision of an order of discharge.

(G)

Re :—Jury Matters.

(44) Reporting attendance to Court of Session by a Jury or an Assessor summoned.

(45) Petition of objection to a person chosen by lot as a Juror. (Sec. 277 Cr. P. C.).

(46) Petition by a Juror or an Assessor after attending a Court of Session for exemption to serve as a Juror or an Assessor for a particular period. (Sec. 330 Cr. P. C.).

(47) Petition by a Juror or an Assessor for remission of fine imposed. (Sec. 332 Cr. P. C.).

(48) Petition by a proposed Juror or an Assessor for exemption from liability to serve as a Juror or an Assessor. (Sec. 320 Cr. P. C.).

Re :—Lunatic.

(49) Petition by lunatic's guardian informing the Court of Sessions that the accused is a lunatic. (Secs. 464 and 465 Cr. P. C.).

Re :—European British Subjects.

(50) Petition by an European British Subject claiming that the majority of Jurors for his trial be European or American. (Sec. 275 Cr. P. C.).

(51) Petition of appeal to Sessions Judge by an European British Subject against Magistrate's finding as to status. (Sec. 443 Cr. P. C.).

(H)

Re :—Maintenance Matters.

(52) Petition by a guardian of a minor child for maintenance against father. (Sec. 488 Cr. P. C.).

(53) Petition by wife u/s 488 Cr. P. C. for getting maintenance from husband.

(54) Objection by husband in a maintenance proceeding. (Sec. 488 Cr. P. C.).

(55) Petition by husband for reducing the allowance ordered to be paid by the Court to wife. (Sec. 489 Cr. P. C.).

(56) Petition by wife for enforcing the order granting her maintenance allowance. (Sec. 490. Cr. P. C.).

Re :—Contempt of Court Matters.

(57) Petition tendering apology in a contempt proceeding. (Sec, 484 Cr. P. C.).

Re :—Getting back documents.

(58) Application by a witness to get back documents filed by him.

Re :—Copies.

(59) Petition for getting copies of judgment etc. by an accused free of costs. (Sec. 371 (A) Cr. P. C.).

Re :—*Hazera*.

(60) Petition reporting attentance of a witness in Court.

CHAPTER II.

দ্বিতীয় অধ্যায়

MODEL PETITION.

No. 1. An application to the Magistrate u/s 45-Cr. P. C.

১ নং—ফৌজদারী কার্য্যবিধি আইনের ৪৫ ধারা মতে দরখাস্ত।

মহামহিম শ্রীযুক্ত আলমবাজার, মহকুমার সব্ ডিভিসনাল্ অফিসার, মহোদয় বরাবরেষু—

দরখাস্তকারী—

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

হুজুর আমার নিবেদন এই যে :—

আমি হুজুরের এলাকাধীন ভানপুরা গ্রামের জনৈক তালুকদার। উক্ত গ্রামে তপশীলে উল্লিখিত ২ দুই জন যোতদার এক খণ্ড ধান্য জমির দখল লইয়া একটী দাঙ্গা ও মারপিঠ করিবার উদ্যোগ করিতেছেন এবং উভয় পক্ষই দাঙ্গার নিমিত্ত বল্লম, সরকী, দা ইত্যাদি অস্ত্র জোগাড় করিয়াছেন। হুজুরে সমস্ত বিষয় অবগত করিলাম। হুজুর যাহাতে উপরোক্ত গ্রামে শান্তিভঙ্গ না হয় তজ্জন্য অনতি বিলম্বে ব্যবস্থা করিতে আজ্ঞা হয়। হুজুরে নিবেদন ইতি। তাং ……

তপশীল। হুজুরের অনুগত ভৃত্য

যোতদারগণের নাম শ্রীপাঁচুরাম দাস—

১। শ্রী—

২। শ্রী—

No. 2. Petition for returning articles found on an accused person at the time of his arrest. (Sec 51 Cr. P. C.)

২ নং—আসামী গ্রেপ্তার কালীন তাহার নিকট যে যে সম্পত্তি পুলিশ প্রাপ্ত হয়, উক্ত সম্পত্তি ফেরৎ পাইবার দরখাস্ত (ফৌঃ কাঃ বিঃ আইনের ৫১ ধারা)।

·······ম্যাজিষ্ট্রেট্ আদালত

কেস নং······সন·········ধারা······ফৌঃ কাঃ বিঃ বা ভাঃ দঃ বিঃ।

ফরিয়াদী—	আসামী—
শ্রী——	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা —

উপরোক্ত মোকর্দ্দমার আসামীর নিবেদন এই যে :—

১। হুজুর আদালতের Warrant বলে·········থানার দারোগা বাবু ·········গ্রামে······তারিখে আসামীকে গ্রেপ্তার করেন।

গ্রেপ্তারের সময় আসামীর নিকট নগদ ২৫৲ টাকা ও একটী পকেট ঘড়ি থাকে। দারোগা বাবু ঐ টাকা ও ঘড়ি জিম্বা রাখেন।

২। হুজুর আদালতের বিচারে আসামী সম্পূর্ণ নির্দ্দোষ সাব্যস্তে খালাস পাইয়াছে।

প্রার্থনা :—

এক দফায় লিখিত সম্পত্তি দরখাস্তকারীকে ফেরৎ দিবার নিমিত্ত পুলিশের উপর বিহিত আদেশ দিতে আজ্ঞা হয়। ইতি। তাং·········

আসামী বা তাহার উকিল বাবুর দস্তখত—

No. 3. Claim to attached property. (Sec 88 Cr. P. C.).

৩ নং—ফৌজদারী আদালত কর্ত্তৃক আসামী বা সাক্ষীর স্থাবর সম্পত্তি ক্রোক্ হইলে তাহাতে দাবী দিবার দরখাস্ত।

.........ম্যাজিষ্ট্রেট আদালত

কেস্ নং.........সন......ধারা......ফৌজদারী কার্য্যবিধি আইন।

সরকার বাহাদুর বনাম আসামী।

শ্রী—
পিতা—
পেশা—
গ্রাম—
থানা—

উক্ত মোকর্দ্দমায় দাবীদার শ্রী.........পিতা .....পেশা......গ্রাম...... থানা......

উপরোক্ত মোকর্দ্দমায় দাবীদারের নিবেদন এই যে :—

১। নিম্ন তপশীলে বর্ণিত সম্পত্তি অত্র মোকর্দ্দমার নিরুদ্দেশ আসামীর উল্লেখে হুজুর আদালত হইতে......তারিখে ক্রোক হইয়াছে।

২। দাবীদার......সালে......তাং......গ্রামের শ্রী..................র নিকট উক্ত সম্পত্তি এক কেতা রেজিষ্টারী খোস্ কবালা দ্বারা খরিদ করিয়া চাষ আবাদে উহা প্রায় ৯ নয় বৎসর কাল দখলীকার আছেন।

৩। উক্ত সম্পত্তিতে আসামীর কস্মিন্‌কালে কোন সত্ব বা দখল ছিল না বা নাই।

৪। গত......সালে প্রচারিত Finally Published Records-of-Rights এ উক্ত সম্পত্তি আসামীর ভোগ দখলি সম্পত্তি বলিয়া লিপিবদ্ধ হইয়াছে।

প্রার্থনা :—

হুজুর, দাবীদার ও সরকার পক্ষের প্রমাণাদি গ্রহণে তপশীল বর্ণিত সম্পত্তি ক্রোকের দায় হইতে মুক্ত দিবার আদেশ দিতে, আজ্ঞা হয় ইতি তাং.........

তপশীলে বর্ণিত সম্পত্তির বিবরণ :—

No. 4. Petition for searching a particular place where stolen properties are supposed to have been kept. (See, 98 Cr. P. C.).

৪ নং—চোরাই মাল তল্লাশী করিবার নিমিত্ত পুলিশের উপর হুকুমের জন্য ফৌঃ কাঃ বিঃ আইনের ৯৮ ধারা মতে ম্যাজিষ্ট্রেটের নিকট দরখাস্ত।

.... ম্যাজিষ্ট্রেট আদালত

কেস নং... . ...সন .....ভাঃ দণ্ড বিধি আইন ৩৭৯ ধারা :—

ফরিয়াদী—	বনাম	আসামী—
শ্রী—		শ্রী—
পিতা—		পিতা—
পেশা—		পেশা—
গ্রাম—		গ্রাম—
থানা—		থানা—

ফরিয়াদী দরখাস্তকারীর নিবেদন এই যে :—

১। দরখাস্তকারী উপরোক্ত মোকদ্দমার-আসামীর বিরুদ্ধে কতকগুলি গহনা চুরির অপরাধে নালিশ করিলে হুজুর আসামীকে Warrant জারি দ্বারা ধৃত করিয়া আদালতে আনিবার আদেশ দিয়াছেন।

২। আসামী ফরিয়াদীর অধীনে চাকুরী করিত। ফরিয়াদী সপরিবারে …………তাং কার্য্য উপলক্ষ্যে স্থানান্তরে গমন করিলে আসামী ফরিয়াদীর বাক্স ভাঙ্গিয়া কতকগুলি গহনা আত্মসাৎ করিয়া পলায়ন করে।

৩। অনুসন্ধানে ফরিয়াদী অবগত হইয়াছেন যে আসামী তাহার নিকট আত্মীয় রামদীন বেরার নিকট চোরাই মাল গচ্ছিত রাখিয়াছে। উক্ত রামদীন বেরা হুজুরেব এলাকায়…… ……গ্রামে বসবাস করিতেছে।

প্রার্থনা :—

যে হুজুর অত্র মোকদ্দমায় চোরাই মাল বাহির করিবার উদ্দেশ্যে ………… …গ্রামে উক্ত রামদীন বেরার বসবাসের গৃহ তল্লাশ করিবার নিমিত্ত পুলিশের উপর বিহিত আদেশ দিতে আজ্ঞা হয় ইতি। তাং……

Note See. 'Search' Part I. Chapter IX. Pages 87—91.

No. 5. Petition for restoration of abducted woman and for search. (Sec. 552 Cr. P. C.)

৫ নং—কোন স্ত্রীলোককে ফুসলাইয়া লইয়া গিয়া লুক্কায়িত রাখিলে তাহার উদ্ধারের জন্য ফৌঃ কাঃ বিঃ আইনের ৫৫২ ধারা মতে দরখাস্ত।

বরিশাল জেলার মহামহিম ডিষ্ট্রিক্ট্ ম্যাজিষ্ট্রেট সাহেব,

বরাবরেষু—

কেস নং…… সন…… ধারা……

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

অত্র মোকর্দ্দমার ফরিয়াদীর নিবেদন এই যে :—

১। আসামী ফরিয়াদীর গ্রামস্থ জনৈক দোকানদার। সে গত ২০শে ভাদ্র তারিখে ফরিয়াদীর বিবাহিতা স্ত্রী শ্রীমতি হরিমণি দাসীকে ফুস্‌লাইয়া লইয়া গিয়া লুকাইয়া রাখিয়াছে। তপশীলে বর্ণিত সাক্ষিগণ ৭ দিবস পূর্ব্বে আসামী ও ফরিয়াদীর স্ত্রীকে একত্রে শ্যামপুরহাটে বেড়াইতে দেখিয়াছেন।

২। অনুসন্ধানে ফরিয়াদী অবগত হইয়াছেন যে আসামী ফরিয়াদীর স্ত্রীকে হুজুর আদালতের এলাকাধীন......গ্রামে তাহার আত্মীয় হরিচরণ দাসের বাড়ীতে লুকাইয়া রাখিয়াছে।

প্রার্থনা :—

যে ফরিয়াদীর স্ত্রীকে উদ্ধারের জন্য পুলিশের উপর......গ্রামের হরিচরণ দাসের বাড়ী তল্লাশ করিবার আদেশ দিতে আজ্ঞা হয় এবং ফরিয়াদীর স্ত্রী উদ্ধার হইলে তাহাকে ফরিয়াদীর জিম্মায় দিবার বিহিত আদেশ দিতে আজ্ঞা হয়। ইতি তাং.........

তপশীল

সাক্ষিগণের নাম

১। ......

২। ......

৩। ......

Note—See Part I Chapter XI Page 95.

No. 6. Application for drawing up proceedings u/s 110 Cr. P. C.

৬ নং—ফৌঃ কাঃ বিঃ আইনের ১১০ ধারা মতে মোকর্দ্দমা স্থাপনের জন্য দরখাস্ত।

......ম্যাজিষ্ট্রেট আদালত

জেলা......

দরখাস্তকারী শ্রী......পিতা......পেশা......গ্রাম......থানা......।

আমার নিবেদন এই যে আমি হুজুর আদালতের এলাকাধীন বসিয়া

গ্রামের জনৈক তালুকদার। আমার প্রজাবর্গ ও স্থানীয় জনসাধারণ তাঁহাদিগের কোন অভিযোগ থাকিলে আমায় জ্ঞাপন করেন। উহারা আমাকে বারংবার জানাইয়াছেন যে তপশীলে বর্ণিত শ্রীরমজান সেথ একজন বদমাইস্ লোক। তাহার চুরি মোকর্দ্দমায় দুই বার শাস্তি হয়। লোকে তাহাকে চুরি ও ডাকাতি মোকর্দ্দমায় লিপ্ত থাকে বলিয়া অনেকবার সন্দেহ করিয়াছে। উক্ত রমজান সেথ এক জন উগ্র প্রকৃতির লোক। সে ভদ্রলোককে অকারণ অবমাননা ও গালাগালি করে। কেহ তাহাকে কোনও বিষয়ে সুপরামর্শ দিলে সে তাহার অনিষ্ট করিবার চেষ্টা করে। স্থানীয় সকলেই উক্ত রমজান সেথের ভয়ে সশঙ্কিত।

প্রার্থনা :—

উক্ত রমজান সেথের সম্বন্ধে পুলিশের উপর তদন্তের হুকুম হয়। পরে পুলিশ রিপোর্ট দৃষ্টে আবশ্যকমতে দরখাস্তকারী ও স্থানীয় ভদ্রলোক যে প্রমাণ উপস্থিত করিবেন তাহা গ্রহণ করিয়া রমজান সেথের বিরুদ্ধে ফৌঃ কাঃ বিঃ আইনের ১১০ ধারা মতে মোকর্দ্দমা স্থাপন করিবার আজ্ঞা হয়। ইতি তাং.........

তপশীল

শ্রীরমজান সেথ

পিতা—

গ্রাম—

থানা—

Note—See Part II Chapter II Pages 99—115.

No. 7. Application u/s 122 Cr. P. C. for proving that the surety produced by the petitioner is a fit person.

৭ নং—জামিনদার উপযুক্ত ব্যক্তি তাহা প্রমাণ করিবার জন্য ফৌঃ কাঃ বিঃ আইনের ১২২ ধারা মতে দরখাস্ত।

দেওঘরের সব্ ডিভিসনাল ম্যাজিষ্ট্রেট্ বাহাদুরের আদালত।

জেলা.........

কেস নং.........সন......১১০ ধারার মোকর্দ্দমা।

সম্রাট্ বনাম আসামী—

শ্রী—
পিতা—
পেশা—
গ্রাম—
থানা—

অত্র মোকর্দ্দমার আসামীর নিবেদন এই যে :—

১। উপরোক্ত মোকদ্দমায় ফৌঃ কাঃ বিঃ আইনের ১১৮ ধারা মতে হুকুম হইয়াছে যে দরখাস্তকারী ২০০৲ টাকার এক খণ্ড জামিন নামা সম্পাদন করে ও ২০০৲ টাকার পরিমাণ জামিন জন্য একটী জামিনদার আদালতে উপস্থিত করে।

২। দরখাস্তকারী......গ্রামের শ্রী......কে জামিনদার উপস্থিত করায় সরকার পক্ষ হইতে আপত্তি হইয়াছে যে উক্ত ব্যক্তি জামিনদার হইবার উপযুক্ত পাত্র নহেন।

৩। দরখাস্তকারী প্রমাণ করিতে প্রস্তুত আছেন যে উক্ত জামিনদার একজন সম্পত্তিশালী ব্যক্তি ও তাঁহার গ্রামে যথেষ্ট প্রতিপত্তি আছে ও তিনি দরখাস্তকারীর জামিন হইবার উপযুক্ত ব্যক্তি।

প্রার্থনা :—

হুজুর দিন ধার্য্য করতঃ দরখাস্তকারীও সরকার পক্ষের প্রমাণাদি গ্রহণে জামিনদার শ্রী............কে জামিন হইবার উপযুক্ত ব্যক্তি সাব্যস্ত করিতে আজ্ঞা হয়। ইতি তাং......

Note—See Part II Chapter I Pages 99-115.

CHAPTER III.

তৃতীয় অধ্যায়

No. 8. Petition under Chapter X. Cr. P. C. for removal of Public Nuisance (Sec 133 Cr. P. C.).

৮ নং—ফৌঃ কাঃ বিঃ আইনের ১০ম অধ্যায় ও ১৩৩ ধারা মতে জনসাধারণের অনিষ্টকারী বিষয় নিবারণের প্রার্থনায় দরখাস্ত।

......ম্যাজিষ্ট্রেট্ আদালত

জেলা......

কেস নং..........সন......ধারা ১৩৩ ফৌঃ কাঃ বিঃ আঃ।

প্রথম পক্ষ।	দ্বিতীয় পক্ষ।
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

প্রথম পক্ষের নিবেদন এই যে :—

১। ফরাক্কাবাদ সহরে মাজেরবাটী নামক স্থানে যে দীঘি পুষ্করিণী আছে উক্ত দীঘি "বড় দীঘি" নামে অভিহিত। দ্বিতীয় পক্ষ উক্ত দীঘির সত্ত্বাধিকারী ও মালিক।

২। উক্ত দীঘির পশ্চিম দিকে কেশবপুর যাইবার সরকারি রাস্তা। এ যাবৎ কাল ঐ রাস্তা ও দীঘির মধ্যে মজবুত শালকাঠের বেড়া দেওয়া ছিল। উক্ত বেড়া একমাস যাবৎ দ্বিতীয় পক্ষ ভাঙ্গিয়াছেন কিন্তু তৎপরিবর্ত্তে কোনও নূতন বেড়া দিবার বন্দোবস্ত করেন নাই। তাঁহাকে স্থানীয় ভদ্রলোকগণ বারংবার এ বিষয়ে অনুরোধ করা সত্ত্বেও তিনি কিছুই করিতেছেন না।

৩। উক্ত দীঘির ও রাস্তার মধ্যে রাত্রে আলোক দিবার কোনও বন্দোবস্ত নাই। গত ১৫ দিবসের মধ্যে সন্ধ্যার সময় উক্ত সরকারী রাস্তা দিয়া যাইবার কালীন তিন জন লোক ঐ দীঘিতে পতিত হয়। বহু কষ্টে দুই জনের জীবন রক্ষা হইয়াছে। কিন্তু একজনকে জল হইতে উঠাইতে না পারায় তাহার মৃত্যু হইয়াছে।

৪। ঐ দীঘির পশ্চিম পার্শ্বের বেড়া অবিলম্বে স্থাপন করিয়া সাধারণের বিপদের কারণ নিবারণ করা একান্ত আবশ্যক।

প্রার্থনা :—

হুজুর সরেজমিন প্রদর্শন পূর্ব্বক দরখাস্তে লিখিত বিষয় সম্বন্ধে তদন্ত করিয়া দ্বিতীয় পক্ষের উপর নোটীশ জারি অন্তে পক্ষগণের প্রমাণ গ্রহণান্তর উক্ত দীঘির পশ্চিম পার্শ্বের বেড়া অনুমাত্র বিলম্ব না করিয়া স্থাপন করিবার জন্য দ্বিতীয় পক্ষের উপর আদেশ দিতে আজ্ঞা হয়। ইতি তাং.........

No. 9, Application u/s 135 Cr. P. C. showing Cause to Order passed u/s 133 Cr. P. C.

৯ নং—ফৌঃ কাঃ বিঃ আইনের ১৩৩ ধারা মতে হুকুমের বিরুদ্ধে কারণ প্রদর্শন।

......ম্যাজিষ্ট্রেট্ আদালত

জেলা......

কেস নং.........সন......ধারা ১৩৩ ফৌঃ কাঃ বিঃ আঃ।

প্রথম পক্ষ।	দ্বিতীয় পক্ষ।
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

অত্র মোকর্দ্দমায় দ্বিতীয় পক্ষের নিবেদন এই যে :—

১। প্রথম পক্ষের দরখাস্ত মতে হুজুর ফৌঃ কাঃ বিঃ আইনের ১৩৩ ধারা মতে এক তরফা হুকুম দিয়াছেন যে দ্বিতীয় পক্ষ তপশীলে বর্ণিত চলৎ পথের উপর যে প্রাচীর নির্ম্মাণ করিয়াছেন উক্ত প্রাচীর ভাঙ্গিয়া দেয় অথবা কেন ভাঙ্গিবে না তৎসম্বন্ধে উপযুক্ত কারণ প্রদর্শন করে।

২। প্রথম পক্ষ দ্বিতীয় পক্ষের সরিক অংশীদার। তপশীলে বর্ণিত সম্পত্তির পূর্ব্ব পার্শ্বে পূর্ব্বে যে প্রাচীর ছিল সেই প্রাচীর ভগ্ন হওয়ায় প্রতিপক্ষ তাঁহার সেই পুরাতন প্রাচীরের বনিয়াদের উপর নূতন প্রাচীর নির্ম্মাণ করিয়াছেন মাত্র। ইহাতে প্রথম পক্ষের আপত্তির কোন সঙ্গত কারণ দেখা যায় না। প্রথম পক্ষ উক্ত চলত পথ সরকারি রাস্তা বলিয়া উল্লেখ করিয়াছেন তাহা সত্য নহে।

২। উক্ত প্রাচীর ৫ পাঁচ হাত মাত্র লম্বা। উক্ত প্রাচীর সরাইয়া দিলে দ্বিতীয় পক্ষের অন্দর মহল বেয়াব্রু হইবে।

প্রার্থনা :—

হুজুর উপরোক্ত বিষয় সম্বন্ধে প্রমাণাদি গ্রহণে বিচার করিয়া হুজুরের ......তারিখের এক তরফা হুকুম রহিত করিতে আদেশ হয়। ইতি তাং...

তপশীল :—

বিরোধীর পথের বিবরণ।

মন্তব্য :—প্রতিপক্ষ জুরির দ্বারা বিচার প্রার্থনা করিলে বিরোধীয় সম্পত্তিতে সত্ব বা দখল দাবী করিতে পারে না।

No. 10: Petition u/s 135 Cr. P, C. claiming appointment of a Jury,

১০ নং—ফৌঃ কাঃ বিঃ আইনের ১৩৫ ধারা মতে জুরি নিযুক্তের প্রার্থনায় দরখাস্ত।

......ম্যাজিষ্ট্রেট্ আদালত

জেলা......

প্রথম পক্ষ।	দ্বিতীয় পক্ষ।
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

উপরোক্ত মোকদ্দমায় দ্বিতীয় পক্ষের নিবেদন এই যে :—

১। হুজুর প্রথম পক্ষের প্রার্থনা মতে তপশীলে বর্ণিত রাস্তার উপর কথিত দর্জার দেওয়াল উঠাইয়া লইবার নিমিত্ত দ্বিতীয় পক্ষের উপর আদেশ জারি করিয়াছেন। অথবা ঐ হুকুম কেন বলবৎ থাকিবে না তাহার কারণ প্রদর্শনের আদেশ দিয়াছেন।

২। কথিত দর্ম্মার দেওয়াল রাস্তার উপরে নাই। রাস্তার পার্শ্বে উক্ত দেওয়াল ২০ কুড়ি বৎসরের ঊর্দ্ধকাল যাবৎ বর্ত্তমান আছে। দ্বিতীয় পক্ষ তাহা সামান্য মেরামত করিয়াছেন মাত্র।

৩। দ্বিতীয় পক্ষ সরকারি চলৎ রাস্তা বন্ধ করেন নাই। এ সম্বন্ধে প্রথম পক্ষের উক্তি অমূলক।

প্রার্থনা :—

হুজুর আইন অনুসারে জুরি নিযুক্ত পূর্ব্বক তাঁহাদের দ্বারা তপশীলে বর্ণিত চলৎ রাস্তা বন্ধ হইয়াছে কিনা তৎসম্বন্ধে রিপোর্ট লইবার আজ্ঞা হয়। ইতি তাং……

তপশীল :—

বিরোধীয় রাস্তার বিবরণ।

No. 11. Petition under Chapter XI Cr. P. C. for an immediate order in case of an apprehended danger. (Sec 144 Cr. P. C).

১১নং—ফৌঃ কাঃ বিঃ আইনের ১১ অধ্যায় মতে বিপদজনক কার্য্য নিবারণের জন্য অনবিলম্বে হুকুমের প্রার্থনায় দরখাস্ত।

বরিশাল জেলার ডিষ্ট্রিক্ট্ ম্যাজিষ্ট্রেট্ সাহেব

বরাবরেষু—

প্রথম পক্ষ	দ্বিতীয় পক্ষ।
শ্রী—	১। শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—
	২-৭। নাম ইত্যাদি

প্রথম পক্ষের নিবেদন এই যে :—

১। দ্বিতীয় পক্ষগণ এলাহাবাদ নূতন বাজারের পশ্চিমে লোকালয়ের মধ্যে একটী গোরস্থান করিবার উদ্দেশ্যে তপশীলে বর্ণিত স্থানে অদ্য ৭দিন যাবৎ কতিপয় মৃতদেহ কবর দিয়াছে ও ভবিষ্যতে উক্ত স্থান সাধারণ কবর স্থানরূপে ব্যবহার করিবার অভিপ্রায় প্রকাশ করিয়াছে।

২। তপশীলে বর্নিত স্থানের সন্নিকটে কলেরা মহামারীরূপে প্রকাশ পাইয়াছে। তপশীলে বর্ণিত স্থান গোরস্থানরূপে ব্যবহার করায় শিয়াল কুকুর প্রভৃতি জন্তুগণ কবর হইতে দুর্গন্ধময় মৃতদেহ বাহির করিয়া উক্ত-স্থানের উপর ফেলিতেছে। তাহাতে স্থানীয় সাধারণের স্বাস্থ্যভঙ্গের বিশেষ আশঙ্কা হইয়াছে।

প্রার্থনা :—

হুজুর সরেজমিনে তদন্ত করিয়া যাহাতে তপশীলে বর্ণিত স্থান গোর-স্থানরূপে ব্যবহৃত হইয়া জনসাধারণের স্বাস্থ্যহানী না হয় তজ্জন্য বিহিত আদেশ দিতে আজ্ঞা হয়। ইতি তাং.........

তপশীল :—

জমির বিবরণ।

উঃ

দঃ

পূঃ

পঃ

মন্তব্য :—

ইংরাজী দরখাস্তের নিম্নে এই সম্বন্ধে বিশেষ আইন দেওয়া হইয়াছে।

No. 12. Application for drawing up proceedings u/s 145 Cr. P. C.

১২নং—শান্তিভঙ্গের সম্ভাবনা থাকিলে বিরোধীয় সম্পত্তি সম্বন্ধে ফৌঃ কাঃ বিঃ আইনের ১৪৫ ধারা মতে Proceeding অর্থাৎ মোকর্দ্দমা দায়ের করিবার প্রার্থনায় দরখাস্ত।

.........আদালত

জেলা......

প্রথম পক্ষ।	দ্বিতীয় পক্ষ।
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

প্রথম পক্ষের নিবেদন এই যে :—

১। প্রথম পক্ষ তপশীলে বর্ণিত নিম্‌তা বাজারের এক মাত্র সত্বাধিকারী। উক্ত বাজার হুজুরের এলাকাধীন কণ্টাই থানার অন্তর্গত নিম্‌তা গ্রামে অবস্থিত। উক্ত বাজার প্রথম পক্ষ অন্যের বিনা সংস্রবে নির্ব্বিরোধে ২০ (কুড়ি) বৎসরের অধিককাল বাজারের দোকানদারগণের নিকট ভাড়া আদায় এবং বাজারের বিক্রেতাগণের নিকট তোলা আদায় করিয়া দখলকার আছেন। দ্বিতীয় পক্ষ উক্ত বাজারের তলস্থ জমি সীতানাথপুরের জনৈক নির্ম্মলচন্দ্র বসুর নিকট খরিদ উল্লেখে বেআইনি মতে বাজারের দোকানদার ও বিক্রেতাগণের নিকট ভাড়া এবং তোলা আদায় করিবার চেষ্টা করিতেছে।

২। একদফায় লিখিত অবস্থাক্রমে উক্ত বাজারের দখল লইয়া শান্তি-ভঙ্গের বিশেষ সম্ভাবনা হইয়াছে। প্রথম পক্ষ এ বিষয় ৭ দিবস পূর্ব্বে স্থানীয় দারোগাবাবুকে অবগত করাইয়াছেন। কিন্তু উক্ত দারোগাবাবু এ যাবৎ কিছুই করেন নাই।

৩। প্রথম পক্ষ তাহার দলিলাদি এবং খাজনা, ভাড়া ও তোলা আদায়ের কাগজ পত্র হুজুরে দাখিল করিয়া **প্রার্থনা** করেন যে :—

হুজুর প্রথম পক্ষের দলিলাদি দৃষ্টে এবং প্রথম পক্ষের যে যে সাক্ষী অদ্য হুজুরে উপস্থিত আছে তাহাদের সাক্ষ্য লইয়া উভয় পক্ষের মধ্যে তপশীলের বাজার সম্বন্ধে ফৌঃ কাঃ বিধি আইনের ১৪৫ ধারা মতে একটী মোকর্দ্দমা স্থাপন করিয়া উক্ত মোকর্দ্দমা শুনানির দিন ধার্য্য পূর্ব্বক পক্ষদিগের উপর তাহাদিগের দাবী সম্বন্ধে বর্ণনাপত্র দাখিল করিবার আদেশ দিয়া প্রমাণ গ্রহণে সুবিচার করিতে আজ্ঞা হয় ইতি তাং……

তপশীল :—

বিবাদীয় বাজারের নাম ও বিবরণ।

CHAPTER IV

চতুর্থ অধ্যায়

No. 13. Petition of Complaint filed in a Mofussil Court. (Sec. 200 Cr.P. C).

১৩ নং—ফৌজদারী মোকর্দ্দমা স্থাপনের জন্য আর্জ্জি।

ফরিয়াদী	আসামী	সাক্ষী	ঘটনার তারিখ	দণ্ডবিধি আইনের ধার
শ্রীযদুনাথ ঘোষ	১। শ্রী........	১। রহমত উল্লা	২২ ১ ৩৭	....
	২। শ্রী.........	২।		....
পেশা.........	৩। শ্রী.........	৩।		....
সাং.........	৪। শ্রী.........	৪।		
থানা.........	৫। শ্রী.........	৫।		
জেলা...... ...	সাং.........	৬।		
	থানা.........			

১নং আসামীর সহিত ফরিয়াদীর দেওয়ানী আদালতে মোকর্দ্দমা হয়। ১নং আসামী উক্ত মোকর্দ্দমায় পরাজিত হইয়া ফরিয়াদীর অনিষ্ট করিবে বলিয়া ভয় প্রদর্শন করে। পরে গতকল্য ১নং আসামী তাহার আত্মীয় ও কৃষাণ লইয়া ফরিয়াদীর তপশীল বর্ণিত জমিতে অবৈধ জনতা করিয়া ১০।১২টা গরু লইয়া প্রবেশ করে ও নিজেরা ওগরু দ্বারা

ফরিয়াদীর কারকিত্তী পাকা ধান্য একেবারে তশ্রুপাত করে। ফরিয়াদী ঘটনার পরে থানায় উপস্থিত হইয়া ঘটনা সম্বন্ধে ডায়েরী করে। দারোগা সাহেব তদন্ত না করিয়া ফরিয়াদীকে আদালতের আশ্রয় লইতে আদেশ দেন। আসামীগণ ফরিয়াদীর ধান্য তশ্রুপাত করিবার উদ্দেশ্যে ফরিয়াদীর জমিতে অবৈধ জনতা করিয়া প্রবেশ করায় ও ধান্য তশ্রুপাত করায় ভারতীয় দণ্ডবিধি আইনের ৪৪৬।৪২৬।১৪৩ ধারা মতে অপরাধ করিয়াছে!

প্রার্থনা—আসামী তলব করিয়া তাহাদের বিরুদ্ধে প্রামাণাদি লইয়া তাহাদিগকে উপরোক্ত ধারা মতে উপযুক্ত শাস্তি দিতে আজ্ঞা হয়।

ইতি তাং.........

তপশীল :—

জমির বিবরণ......

....

ফরিয়াদীর দস্তখত!

No. 14. Short Petition of Complaint.

১৪ নং—ফৌজদারী মোকর্দ্দমার ছোট আর্জ্জি।

......আদালত জেলা।

বাদী	আসামী	সাক্ষী
শ্রীঅতুলকৃষ্ণ পাল	শ্রীনাতুল কুর্ম্মি	১। নন্দলাল শেঠ
সাং বিজপুর	সাং বিজপুর	২। রামপদ পাল
থানা বিজপুর	থানা বিজপুর	৩। ভোলানাথ পাল
		৪। জ্যোতিষচন্দ্র পাল
		৫। পশুপতি পরামানিক
		৬। মন্মথনাথ নিয়োগী
		অন্য সাক্ষীও আছে।

ঘটনা   চার্জ্জ

১৬,৫।২৩ দঃ বি আইনের ৫০০।৪৪৮।৫০৪ ধারা

উক্ত মোকদ্দমার বাদী শ্রীঅতুলকৃষ্ট পাল আমার নালিশের বিবরণ এই যে গতকল্য আন্দাজ বেলা ১০॥ টার সময় আসামী আমার দোকানের ভিতর ঢুকিয়া আমাকে কুৎসিত ভাষায় গালি গালাজ করিয়া আমাকে ছোবা দেখাইয়া মারিতে উদ্যত হয়। সাক্ষীরা আসিয়া পড়াতে আসামী পলাইয়া যায়। কারণ এই যে Station Roadএর উত্তর পার্শ্বে আমার খালি জমিতে আসামী কষাইএর দোকান হইতে মাংসের ছাঁট, রক্তাদি ফেলিতেছিল, আমি আপত্তি করিলে উক্তরূপ অত্যাচার করিয়াছে। **প্রার্থনা** আসামী ও সাক্ষী (সাক্ষীর নাম ও ঠিকানা) তলবে বিচার করিয়া আসামীকে উপযুক্ত শাস্তি দিতে আজ্ঞা হয়। নিবেদন ইতি তাং ১৭।৫।৩৩

No. 15. Petition of Complaint to Union Bench.

১৫নং—ইউনিয়ন বেঞ্চে ফৌজদারী মোকর্দ্দমা স্থাপনের দরখাস্ত।

......ইউনিয়ন বেঞ্চের প্রেসিডেন্ট মহাশয়

বরাবরেষু।

১৯৩২ খৃষ্টাব্দের ১৮নং মোকর্দ্দমা।

ফরিয়াদীরনাম ও ঠিকানা। শ্রীমহাম্মদ হেরাসতুল্লা সাং শঙ্করপুর

আসামীর নাম ও ঠিকানা। ১। সেখ ছবদার মণ্ডল। ২। সেখ বেলী মণ্ডল। ৩। সেখ নুরআলি মণ্ডল। ৪। সেখ কালু মণ্ডল। ৫। সেখ মহম্মদ মণ্ডল। ৬। সেখ তফিজদি মণ্ডল। ৭। এলাবক্স্ মণ্ডল। ৮। সেখ আজের মণ্ডল। ৯। সেখ হাচু মণ্ডল।

১০। আমিরুদ্দি মণ্ডল। ১১। সেখ পাঁচু মণ্ডল। ১২। সেখ বিশু মণ্ডল। ১৩। সেখ জমিরদ্দি মণ্ডল। ১৪। সেখ লতিব সর্দ্দার। ১৫। জলিলুদ্দিন মণ্ডল। ১৬। সেখ সাহেবজান মণ্ডল। সাং শঙ্করপুর থানা জগদ্দল।

ঘটনার তারিখ—২১শে জুন ১৯৩২ সাল।—

ঘটনার স্থান—শঙ্করপুর পশ্চিমপাড়া।

কোন ধারার অপরাধ—৪৪৮।৫০৪ দণ্ডবিধি আইন

সাক্ষীর নাম ও ঠিকানা।

১। সেখ আনেচ আলি মণ্ডল। ২। সেখ মোতালিম সর্দ্দার। ৩। সেখ নকাই মণ্ডল। ৪। সেখ হাছিম মণ্ডল। ৫। সেখ দোলারদ্দি সর্দ্দার। ৬। সেখ মাদাব বক্স্ মণ্ডল। ৭। সেখ সাজাহান মণ্ডল। সাং শঙ্করপুর। ৮। শ্রীনিবারণচন্দ্র হাজারী সাং বেল্লে। ৯। শ্রীসুরেন মণ্ডল। ১০। শ্রীযুগল মণ্ডল। ১১। শ্রীনিতাই মণ্ডল সাং শঙ্করপুর থানা জগদ্দল। অন্য সাক্ষীও আছে।

নালিশের বিবরণ।

আমার নিবেদন এই যে, আমার সঙ্গে বিশু মণ্ডলের ঝগড়া হয় তাহার মীমাংসার জন্য বিশু গ্রামের মোড়লদের ও তাড়াবেড়িয়া ইউনিয়ন বোর্ডের প্রেসিডেণ্ট সবদার মণ্ডল ও নুর আলি মণ্ডলকে শালিষী করিবার জন্য ডাকে। রাত্রিতে শালিষী মীমাংসার পর তাড়াবেড়িয়া ইউনিয়ন বোর্ডের প্রেসিডেণ্ট মহাশয় আমার প্রতি কতকগুলি অকথ্য ভাষা ব্যবহার করায় আমি তাঁহাকে ঐরূপ অভদ্রোচিত ভাষা ব্যবহার করিতে নিষেধ করি; তাহাতে তিনি আমার উপর রাগান্বিত হইয়া মারিতে উদ্যত হন এবং চীৎকার করায় প্রায় ৫০।৬০ জন লোক লাঠি সোটা লইয়া আমার বাড়ী চড়ওয়া হইয়া আমায় মারিতে আসে। আমি প্রাণভয়ে বাড়ী ছাড়িয়া লুকাইয়া প্রাণ রক্ষা করিয়াছি। তাহাতে জানিতে পারিলাম, উক্ত প্রেসিডেণ্ট মহাশয় আমারসঙ্গে ঝগড়া

করিতে ও আমাকে মারিবার জন্য পূর্ব্ব হইতে প্রস্তুত হইয়া আসিয়াছিলেন। এক্ষণে হুজুর আসামীরও আমার পক্ষে সাক্ষী তলব করিয়া সুবিচার করিতে আজ্ঞা হয়। নিবেদন ইতি। তাং ২২শে জুন সন ১৩৩২ সাল।

লেখক	দরখাস্তকারীর দস্তখত
শ্রীবলরাম বন্দ্যোপাধ্যায়	শ্রীমহম্মদ হেরাস ভুল্লা
সাং নারায়ণপুর	সাং শঙ্করপুর

মন্তব্য ; এই দরখাস্ত ছাপা ফরমে লিখিতে হয়। ফরম আদালতে পাওয়া যায়।

No. 16. Petition by an Accused Surrendering in Court.

১৬নং—আসামী আদালতে হাজির হইয়া আত্মসমর্পণ করিয়া জামিনের প্রার্থনায় দরখাস্ত ঃ

……ম্যাজিষ্ট্রেট্ আদালত।

জেলা……

কেস নং……সন……ধারা……ফৌঃ কাঃ বিঃ বা ভাঃ দঃ বিঃ

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

উপরোক্ত মোকর্দ্দমায় আসামীর নিবেদন এই যে :—

১। হুজুর আসামীকে ধৃত করিয়া আনিবার জন্য……তারিখে Warrant বাহির জন্য আদেশ দেন। উক্ত Warrant এখন পর্য্যন্ত জারি হয় নাই।

২। আসামী ১দফা লিখিত Warrantএর বিষয় স্থানীয় শ্রী......... নিকট অবগত হইয়াছেন।

৩। আসামীর কন্যা শ্রীমতী.........দাসী দারুণ পীড়া-গ্রস্থা হওয়ায় এক মাস পূর্ব্বে তাহাকে দেখিবার জন্য আসামী দশ মাইল দূরে......গ্রামে প্রস্থান করেন। তিন দিন হইল আসামী গৃহে প্রত্যাবর্ত্তন করিয়াছেন।

৪। আসামীর উপর এই মোকর্দ্দমার কোন সমন জারি হয় নাই। ফরিয়াদী আসামীর কন্যার পীড়ার বিষয় সবিশেষ অবগত ছিলেন ও আসামী যে ইচ্ছাপূর্ব্বক সমনজারি এড়াইবার জন্য অন্যত্র গমন করেন নাই তাহাও তিনি জানিতেন। কিন্তু ফরিয়াদী দুরভিসন্ধি প্রযুক্ত উক্ত বিষয় আদা-তে জ্ঞাপন করেন নাই। আসামী হুজুরে হাজির হইয়া আত্মসমর্পণ-পূর্ব্বক প্রার্থনা করেন যে :—

হুজুর উপযুক্ত জামিন লইয়া আসামীকে মোকর্দ্দমার ধার্য্য তারিখে হাজির হইবার অনুমতি দিয়া তাহার বিরুদ্ধে যে Warrant জারির আদেশ হইয়াছে তাহা রহিত করিবার আদেশ হয়। ইতি—তাং......

No. 17. Written Statement of Accused.

১৭নং—আসামীর বর্ণনা পত্র।

......আদালত

জেলা.........

ধারা ৪২৬ ফৌঃ দঃ বিঃ।

ফরিয়াদী।	আসামী।
আবদুল হক্।	উমর সর্দ্দার।
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

আসামীর নিবেদন এই যে :—

১। আমি সম্পূর্ণ নির্দ্দোষী।

২। আমি আজ প্রায় ৮।৯ বৎসর যাবৎ সাধারণ মুসলমানের নিকট চাঁদা লইয়া বিবাদীয় মসজিদ্ তৈয়ার করিয়াছি। এখনও ইহার সম্মুখের চাতাল পাকা করা হয় নাই। জুম্মার দিনে নামাজির নিকট হইতে এক পয়সা হিসাবে লওয়া হয়—পূর্ব্বে তাহা আবদুল হক্ রাখিত। এক্ষণে মস্জিদের বাকীকাজ সম্পূর্ণ করিবার জন্য উক্ত আদায়ের পয়সা সাধারণ ফণ্ডে জমা হয়। আবদুল হক্‌কে লইতে দেওয়া হয় না। সেই কারণে আবদুল হক্ রাগান্বিত হইয়া আমার সহিত মামলা মোকর্দ্দমা করিতেছে।

৩। মস্জিদের সাম্‌নের ড্রেনে জল জমিয়া ও পাতা ইত্যাদি পচিয়া দুর্গন্ধ হইয়াছিল। আমি সাধারণ নামাজির অনুরোধে উহা পরিষ্কার করাইয়া দিয়াছি ও মস্জিদের সম্মুখে যে গর্ত্তাদি ছিল তাহা ভরাট করিয়া দিয়াছি। ফরিয়াদীর কোন ক্ষতি করিবার ইচ্ছায় ইহা করি নাই। সাধারণের উপকারের জন্য করিয়াছি।

৪। অত্র সহ দুইটী জাবেদা নকল দাখিল করিলাম তাহা আমার জবাবের সামিল গণ্য করিতে প্রার্থনা করি। ইতি তাং………

No. 18. Petition for Summoning Witnesses. (Secs 244 & 68 Cr. P. C.).

১৮-নং—সাক্ষীর বিরুদ্ধে সমনজারীর প্রার্থনায় দরখাস্ত (ফৌঃ কাঃ বিঃ আইনের ২৪৪ ও ৬৮ ধারা)

………সবডিভিসনাল ম্যাজিষ্ট্রেট আদালত।

কেস নং……সন………ধারা……দঃ বিঃ আইন।

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

উপরোক্ত মোকর্দ্দমার আসামীর নিবেদন এই যে :—

১। আসামীর জবাব প্রমাণ জন্য তপশীলে বর্ণিত ৫ জন সাক্ষীকে আদালতে উপস্থিত করিয়া জবানবন্দী করান আবশ্যক।

২। ২নং হইতে ৫নং সাক্ষীর নিকট তপশীলে বর্ণিত দলিল তলব না করিলে আসামী তাহার মোকর্দ্দমা প্রমাণ করিতে অপারগ হইবে।

প্রার্থনা :—

তপশীলে বর্ণিত সাক্ষিগণের উপর সমনজারীর আদেশ দিতে ও ২নং হইতে ৫নং সাক্ষীকে তাঁহাদের নামের বিরুদ্ধে যে সব দলিল উল্লেখ করা হইয়াছে সেই সমস্ত দলিল লইয়া আদালতে উপস্থিত হইবার আদেশ দিতে আজ্ঞা হয়। ইতি তাং… …..

তপশীল :—

সাক্ষীর নাম—	সাক্ষীর নাম—
পিতা—	পিতা—
গ্রাম—	গ্রাম—
থানা—	থানা—
ইত্যাদি—	ইত্যাদি—

এবং যে যে সাক্ষীর নিকট যে যে দলিল তলব করিতে হইবে তাহার বিবরণ দিতে হইবে

মন্তব্য :—

Warrant case হইলে সাক্ষীব খরচা বা তলবানা দিতে হয় না। কিন্তু Summons case হইলে পক্ষকে তলবানা ও সাক্ষীর খোরাকী, সাক্ষীর আদালতে যাতায়াতের খরচা, আদালতে জমা দিতে হয়।

No. 19. Petition for issuing a warrant of arrest against a witness. (Sec. 75 Cr. P. C.).

১৯নং—সাক্ষীকে warrant দ্বারা ধৃত করিয়া আনিবার জন্য দরখাস্ত (ফৌঃ কাঃ আঃ ৭৫ ধারা)

.........সবডিভিসনাল ম্যাজিষ্ট্রেট আদালত।

কেস নং· ·সন ·· ··ধারা······দঃ বিঃ আঃ বা ফৌঃ কাঃ বিঃ আঃ

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

উক্ত মোকর্দ্দমার আসামীর নিবেদন এই যে :—

১। হুজুর আদালতের এলাকাধীন ·····গ্রামের শ্রীপ্রেমচাঁদ বেহারাকে আসামীর পক্ষে সাক্ষ্য দিবার জন্য······তারিখে উক্ত সাক্ষীর উপর সমনজারি করা হয়।

২। আসামীর পক্ষে নিশানদারের Affidavit আদালতে দাখিল আছে আদালতের পদাতিক শ্রী.........উক্ত সাক্ষীর উপর সমনজারি করে।

উক্ত পদাতিক ও সমনজারির সম্বন্ধে Affidavit করিয়া তাহা হুজুরে দাখিল করিয়াছে।

৩ উক্ত সাক্ষী আসামী পক্ষের বিশেষ আবশ্যকীয় সাক্ষী, তিনি বিরোধীয় সম্পত্তি সম্বন্ধে আসামীর খরিদা কোবালা প্রমাণ করিবেন্।

৪। আসামী অনুমান্ করেন যে ফরিয়াদী উক্ত সাক্ষীকে আদালতে হাজির হইতে দিতেছেন না।

প্রার্থনা :—

উক্ত সাক্ষীকে Warrant দ্বারা আদালতে ধৃত করিয়া আনিয়া আসামীর পক্ষে তাঁহার জবানবন্দী গ্রহণ করিতে আজ্ঞা হয়। ইতি তাং......

No. 20. Petition for attachment of property of a witness.

২০নং—সাক্ষীর সম্পত্তি ক্রোক জন্য দরখাস্ত।

জেলা...... সব্ ডিভিসন......

সব-ডিভিসন্যাল ম্যাজিষ্ট্রেট্ বাহাদুরের আদালত।

ফৌজদারী কেস নং.........

ফরিয়াদী—(ক)	আসামী—(গ)
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

ফৌজদারী কার্য্যবিধি আইনের ৮৮ ধারা মতে দরখাস্ত।

আসামী শ্রী……… আমার নিবেদন এই :—

১। আসামী সাক্ষী (গ) কে উপরোক্ত মোকর্দ্দমায় সাক্ষ্য দিবার জন্য তাহার উপর রীতিমত সমনজারী করেন। ঐ সমন উক্ত সাক্ষী নিজে দস্তখত করিয়া রসিদ দিয়া………তারিখে গ্রহণ করেন। আসামী-পক্ষে উক্ত মর্ম্মে এফিডেভিট্ দাখিল করা হইয়াছে।

২। তৎপরে আসামীকে গ্রেপ্তার করিয়া আনিবার জন্য হুজুরাদালত হইতে ওয়ারেণ্ট বাহির হয় কিন্তু আসামী, যাহাতে পুলিশ তাঁহাকে ধৃত করিতে না পারে তজ্জন্য গৃহ ত্যাগ করিয়া স্থানান্তরে পলায়ন করিয়াছেন। তৎপরে উক্ত সাক্ষীর বিরুদ্ধে ফৌজদারী কার্য্যবিধি আইনের ৮৭ ধারা মতে Proclamation বাহির করা হইয়াছে। উক্ত সাক্ষী অত্র মোকর্দ্দমায় অত্যাবশ্যকীয় সাক্ষী হইতেছেন। তাঁহার দ্বারা আসামীর জবাবের— বিষয় প্রমাণিত হইবে। এক্ষণে সাক্ষীর তপশীলে বর্ণিত সম্পত্তি ক্রোক না হইলে তাঁহার কোন মতেই আদালতে উপস্থিত হইবার সম্ভাবনা নাই।

প্রার্থনা :—

তপশীলে বর্ণিত সাক্ষীর সম্পত্তি ক্রোক করিবার বিহিত আদেশ দিতে আজ্ঞা হয়। ইতি তাং……

[সাক্ষীর বিরুদ্ধে এস্তাহার অর্থাৎ Proclamation জারির প্রার্থনার সময় এই দরখাস্ত করা যাইতে পারে. তবে সাধারণতঃ Proclamation জারির পরে এই দরখাস্ত করা হয়।]

তপশীল, সাক্ষীর নাম, সাকিম—

১। শ্রী……

সাং……

সাক্ষীর সম্পত্তির বিবরণ—

No. 21. Petition for examination of a witness on commission u/s 503 Cr. P. C.

২১নং—আবশ্যকীয় সাক্ষীর কমিশনে জবানবন্দী লইবার প্রার্থনায় দরখাস্ত (ফৌঃ কাঃ বিঃ আইনের ৫০৩ ধারা)।

মহামহিম শ্রীযুক্ত ডিষ্ট্রিক্ট ম্যাজিষ্ট্রেট্ সাহেবের আদালত।

জেলা হুগলী।

কেস নং ১৯১৬ of ১৯২৩।

সম্রাট। বনাম আসামী

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

আসামীর নিবেদন এই যে :—

১। অত্র মোকর্দ্দমায় নদীয়ার রামচন্দ্র বন্দ্যোপাধ্যায়ের পত্নী শ্রীমতি হেমকুমারী দেবী একজন বিশেষ আবশ্যকীয় সাক্ষী হইতেছেন। তিনি আসামীর পক্ষে.........বিষয় প্রমাণ করিবেন (সাক্ষী কি কি বিষয় প্রমাণ করিবেন তাহা এইস্থানে লিখিতে হইবে)

২। উক্ত সাক্ষীর জবানবন্দী না হইলে অত্র মোকর্দ্দমায় সুবিচারের সম্ভাবনা নাই।

৩। উক্ত সাক্ষী অত্র আদালত হইতে ৭০০ মাইল দূরে দিল্লী সহরে তাঁহার স্বামীর নিকট বসবাস করিতেছেন ও তিনি বাত রোগে আক্রান্ত হইয়া শয্যাশায়িনী আছেন।

৪। উক্ত সাক্ষী আরোগ্য হওয়া সময়সাপেক্ষ, এবং তাঁহাকে দিল্লী হইতে হুগলী আনিবার খরচ অত্যন্ত অধিক এবং তাঁহাকে এখানে আনিতে হইলে তাঁহার বিশেষ কষ্ট ও আসামীর অযথা অতিরিক্ত অর্থদণ্ড হইবে।

৫। আসামী কমিশন সংক্রান্ত যাবতীয় খরচাদি বহন করিতে প্রস্তুত আছেন।

উপরোক্ত অবস্থাক্রমে প্রার্থনা :—

কমিশনে উক্ত সাক্ষীর জবানবন্দী লইবার আদেশ এবং কমিশন দিল্লীর ডিষ্ট্রিক্ট ম্যাজিষ্ট্রেট্ বা অন্য কোন উপযুক্ত ম্যাজিষ্ট্রেট্ সাহেবের নিকট প্রেরণ করিতে আজ্ঞা হয়। ইতি—তাং ......

মন্তব্য :—

সাক্ষীর জবানবন্দীর জন্য ইন্টারোগেটরী (Interrogatory) ও ক্রস ইন্টারোগেটরী (Cross-interrogatory) আদালতে দাখিল করিতে হয়। পক্ষগণ ইচ্ছা করিলে স্বয়ং বা উকিলের দ্বারা কমিশনারের নিকট উপস্থিত হইয়া সাক্ষীর জবানবন্দী বা জেরা করিতে পারেন। ডিষ্ট্রিক্ট ম্যাজিষ্ট্রেট্ ও প্রেসিডেন্সি ম্যাজিষ্ট্রেট্ ভিন্ন অন্য ম্যাজিষ্ট্রেট্ কোন সাক্ষীর কমিশনে জবানবন্দী লইবার আদেশ দিতে পারেন না। তাঁহাদের আদালতে কমিশনে জবানবন্দী লইবার দরখাস্ত হইলে ঐ দরখাস্ত জেলার ম্যাজিষ্ট্রেট্ সাহেবের নিকট (এবং প্রেসিডেন্সি সহরে প্রেসিডেন্সি ম্যাজিষ্ট্রেটের নিকট) হুকুমের জন্য পাঠাইতে হয়। ফৌজদারী মোকর্দ্দমায় কমিশনে জবানবন্দী লইবার প্রার্থনা সচরাচর মঞ্জুর হয় না।

No. 22. Petition when a relevant question is disallowed by the Court.

২২নং—সঙ্গত প্রশ্ন আদালত সাক্ষীকে জিজ্ঞাসা করিতে না দিলে তৎসম্বন্ধে আপত্তির দরখাস্ত।

…………ম্যাজিষ্ট্রেট্ আদালত

কেস নং………সন……ধারা……ফৌ: দ: বি: আ:

সম্রাট্ বনাম আসামী

শ্রী

পিতা

পেশা

গ্রাম

থানা

আসামীর পক্ষে নিবেদন এই যে :—

১। আসামীর উকিলবাবু ফরিয়াদীর ৩নং সাক্ষীকে নিম্নলিখিত প্রশ্ন করিলে হুজুর উক্ত প্রশ্ন জিজ্ঞাসা করিতে নিষেধ করিয়াছেন।

প্রশ্ন !

………………

২। আসামীর উকিলবাবু বিবেচনা করেন যে উক্ত প্রশ্ন এ মোকর্দ্দমার সঙ্গত (relevant) প্রশ্ন, এবং ঐ প্রশ্নের যথাযথ উত্তর পাইলে আসামীর মোকর্দ্দমায় সুবিধা হওয়া সম্ভব।

প্রার্থনা—

হুজুর মোকর্দ্দমার অবস্থা পুনরায় বিবেচনা করিয়া ও আসামীর পক্ষের উকিলবাবুর বক্তব্য শ্রবণান্তর উপরোক্ত সাক্ষীকে উক্ত প্রশ্ন জিজ্ঞাসা করিবার অনুমতি দিতে আজ্ঞা হয়। ইতি তাং………

No. 23. Petition of objection if ir-relevant question is put.

২৩ নং—অপর পক্ষের উকিল কোন সাক্ষীকে অসঙ্গত প্রশ্ন জিজ্ঞাসা করিলে তৎসম্বন্ধে আপত্তির দরখাস্ত।

.........ম্যাজিষ্ট্রেট্ আদালত

কেস নং.. ...সন......ধারা......ভাঃ কাঃ বিঃ আঃ।

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

আসামীর পক্ষে নিবেদন এই যে :—

১। ফরিয়াদী পক্ষের উকিল বাবু নং......সাক্ষীকে নিম্নলিখিত প্রশ্ন করিয়াছেন।

প্রশ্ন

......

......

উক্ত প্রশ্ন অসঙ্গত ও অপ্রাসঙ্গিক। নিম্নলিখিত হেতুবাদে উক্ত প্রশ্ন disallowed হওয়া উচিৎ।

হেতুবাদ

......

......

প্রার্থনা :—

উক্ত প্রশ্ন অসঙ্গত ও অপ্রাসঙ্গিক প্রশ্ন সাব্যস্তে সাক্ষীকে উক্ত প্রশ্ন জিজ্ঞাসা করিবার অনুমতি না দেওয়া হয়।

No. 24. Petition objecting to the admissibility of a document at the time of trial.

২৪ নং—আদালতে কোন দলিল বে-আইনি মতে প্রমাণ স্বরূপ গ্রহণ করাইবার চেষ্টা হইলে তৎসম্বন্ধে আপত্তির দরখাস্ত।

……ম্যাজিষ্ট্রেট আদালত

কেস নং……সন……ধারা……ফৌঃ কাঃ বিঃ আঃ।

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

অত্র মোকর্দ্দমায় আসামীর পক্ষের নিবেদন এই যে :—

ফরিয়াদীর তরফে যখন……দলিল (দলিলের বিবরণ) গ্রহণ পূর্ব্বক হুজুর Exhibit mark করেন তখন আসামীর পক্ষের উকিল বাবু নিম্নলিখিত হেতুবাদে আপত্তি করেন যে উক্ত দলিল আসামীর বিরুদ্ধে প্রমাণ স্বরূপে গ্রহণ হইতে পারে না।

আপত্তির হেতুবাদ—

১। ……

২। ……

৩। ……

৪। ……

প্রার্থনা :—

Indian Evidence Actএর ……ধারা মতে উক্ত দলিল প্রমাণ স্বরূপ গ্রহণ করা যায় না সাব্যস্তে উক্ত দলিল Expunge (বাতিল) করিতে আজ্ঞা হয়। ইতি তাং……

পঞ্চম অধ্যায়

No. 25. Petition for adjournment of a case.

২৫ নং—মোকর্দ্দমা মুলতুবী রাখিবার প্রার্থনায় দরখাস্ত।

……ম্যাজিষ্ট্রেট্ আদালত

কেস নং ৩৬ সন ১৯৩৪ ধারা……ফৌঃ কাঃ বিঃ অথবা ভাঃ দঃ বিঃ আইন।

আবেদনকারী :—		প্রতিপক্ষ :—
শ্রী……(ফরিয়াদী)	বনাম	শ্রী— (আসামী)
পিতা—		পিতা—
পেশা—		পেশা—
গ্রাম—		গ্রাম—
থানা—		থানা—

১৯৩৪ সনের ৩৬ নং মোকর্দ্দমা মুলতুবীর জন্য প্রার্থনা।

ফরিয়াদী শ্রী…………… আমার নিবেদন এই যে :—

(১) উক্ত মোকর্দ্দমায় ফরিয়াদীর দুইটী বিশেষ আবশ্যকীয় সাক্ষীর (নাম………ঠিকানা………) উপর রীতিমত সমনজারী করা হইয়াছিল কিন্তু তাঁহারা অদ্য তারিখে আদালতে হাজির হন নাই। ফরিয়াদী অনুসন্ধানে অবগত হইয়াছেন যে উক্ত সাক্ষীদ্বয় বসন্ত রোগে আক্রান্ত হইয়াছেন এবং তাঁহারা চলৎ শক্তি রহিত। উক্ত সাক্ষীদ্বয়কে যে চিকিৎসক চিকিৎসা করিতেছেন তাঁহার কৃত এফিডেভিট্ অত্র দরখাস্তের সহিত দাখিল করা হইল।

(২) ফরিয়াদীর পক্ষে উক্ত দুই বিশিষ্ট সাক্ষীর এজাহার না হইলে তাহার মোকর্দ্দমা সন্তোষজনক রূপে প্রমাণিত হইবে না।

আবেদনকারীর প্রার্থনা এই যে, উল্লিখিত সাক্ষিগণকে আদালতে হাজির হইবার জন্ত ১৫ দিনের সময় দিতে আজ্ঞা হয়। ইতি তাং……

দ্রষ্টব্য :—ম্যাজিষ্ট্রেট্ বাহাদুরের হুকুমমতে সমন জারী হইবার পর প্রতিবাদী কর্তৃক এইরূপ দরখাস্ত করা হইলে ম্যাজিষ্ট্রেট্ সাক্ষীদিগকে আদালতে আসিবার জন্ত সময় দিবেন।

(See note below the corresponding model petition in English).

No. 26. Petition filed before a Subordinate Court for adjournment of a case for moving the High Court for transfer of the case. (Sec 526 Cr. P. C.).

২৬ নং—এক আদালত হইতে অন্য আদালতে মোকর্দ্দমা বিচার জন্য হাইকোর্টে আবেদন করিবার নিমিত্ত নিম্ন আদালতে মুলতুবির দরখাস্ত।

……ম্যাজিষ্ট্রেট্ আদালত

কেস নং………সন……ধারা …—ভাঃ দঃ বিঃ বা ফৌঃ কাঃ বিঃ।

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

অন্য আদালতে মোকর্দ্দমা বিচার জন্ত হাইকোর্টে আবেদন করিবার নিমিত্ত সময়ের দরখাস্ত।

আসামী—আবেদনকারীর প্রার্থনা এই যে :—

১। অত্র আদালতে মোকর্দ্দমা বিচারকালে কতকগুলি গুরুতর বিধি বহির্ভূত ঘটনা হওয়ায়, অত্র আদালতে সুবিচার পাওয়া সম্বন্ধে আসামীর মনে বিশেষ আশঙ্কার সঞ্চার হইয়াছে। (উক্ত বিধি বহির্ভূত ব্যাপারগুলি দরখাস্তে লিখিতে হইবে)।

২। অত্র আদালত এই আসামীর প্রতিকূলে নানারূপ মন্তব্য প্রকাশ করিয়াছেন। আবেদনকারী বিশেষরূপ অনুসন্ধানে জ্ঞাত নিম্নলিখিত বিষয়গুলি বিবৃত করিতেছেন।

(ক) বাদী হুজুরের পুত্রের শ্বশুরবাড়ীর সম্পর্কে নিকট আত্মীয়।

(খ) অনুসন্ধানে জ্ঞাত হওয়া গিয়াছে যে ঘটনার সময় হুজুর ঘটনাস্থলের অতি নিকটে উপস্থিত ছিলেন এবং বাদীও তাহার কতিপয় সাক্ষী ঘটনার অল্প পরেই হুজুরের সহিত সাক্ষাৎ করিয়া ঘটনার একটী অসত্য বিবরণ হুজুরের কর্ণগোচর করে।

(গ) উপরোক্ত দফায় বর্ণিত কারণে দরখাস্তকারীর অনুকূলেই হউক অথবা প্রতিকূলেই হউক হুজুর এই মোকর্দ্দমার একজন সাক্ষী হইবার বিশেষ সম্ভাবনা আছে।

উপরোক্ত ও অন্যান্য কারণে আবেদনকারী এই মোকর্দ্দমা হুজুর আদালত হইতে অন্য কোন উপযুক্ত ম্যাজিষ্ট্রেট্ আদালতে সুবিচার জন্য স্থানান্তরিতের উদ্দেশ্যে হাইকোর্টে আবেদন করিতে উপদিষ্ট হইয়াছেন।

প্রার্থনা :—

হুজুর আবেদনকারীকে হাইকোর্টে দরখাস্ত করিবার জন্য সুযোগ দিবার নিমিত্ত অত্র মোকর্দ্দমা ১৫ দিনের জন্য মুলতুবী রাখিতে আজ্ঞা হয়।

Note—৫২৬ ধারা বর্ত্তমানরূপে সংশোধনের ফলে ম্যাজিষ্ট্রেটের নিকট এইরূপ দরখাস্ত হইলে তিনি মোকর্দ্দমা মুলতুবি রাখিতে বাধ্য। অবশ্য শঠতামূলক দরখাস্ত কিনা, তদ্বিষয়ে সন্দেহ হইলে ম্যাজিষ্ট্রেট্ দরখাস্তকারীর নিকট হইতে উপযুক্ত জামিন লইতে পারেন।

No. 27. Petition by Complainant claiming Compensation u/s 545 Cr. P. C.

২৭ নং—জরিমানার টাকা হইতে ক্ষতিপূরণ পাইবার প্রার্থনায় ফরিয়াদীর দরখাস্ত (ফৌঃ কাঃ বিঃ আইনের ৫৪৫ ধারা)।

ঝিনাইদহের সবডিভিসনাল ম্যাজিষ্ট্রেট্ আদালত,

জেলা যশোহর।

কেস নং............সন .... ধারা.... ....ফৌঃ কাঃ বিঃ আঃ

ফরিয়াদী	আসামী
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

উক্ত মোকর্দ্দমায় ফরিয়াদীর নিবেদন এই যে :—

১। অত্র মোকর্দ্দমায় আসামী ফরিয়াদীর একটী ঘড়ি চুরি করে। ফরিয়াদী বিশ্বাস করেন যে, তিনি উক্ত চুরির বিষয় অত্র মোকর্দ্দমায় সন্তোষজনক ভাবে প্রমাণ করিয়াছেন।

২। চোরাই ঘড়ির মূল্য ২৫৲ টাকা মাত্র!

৩। ফরিয়াদীর অত্র মোকর্দ্দমা চালাইতে ১৫৲ টাকা খরচ হইয়াছে।

প্রার্থনা—

আসামীর সশ্রম কারাদণ্ড এবং জরিমানা হইলে জরিমানার টাকা হইতে ফরিয়াদীকে ক্ষতিপূরণ বাবদ ঘড়ির মূল্য ২৫৲ টাকা ও মোকর্দ্দমার খরচা বাবদ ১৫৲ টাকা দিবার আদেশ দিয়া মোকর্দ্দমার সুবিচার করিতে আজ্ঞা হয়। ইতি—তাং

No. 28. Petition for withdrawal of Complaint.
(Sec. 248 Cr. P. C.).

২৮ নং—ফরিয়াদী কর্ত্তৃক মোকর্দ্দমা উঠাইয়া লইবার দরখাস্ত।

আলিপুরের সদর সব ডিভিসনাল ম্যাজিষ্ট্রেট আদালত।

কেস নং······ সন······ধারা ৩২৩ ভাঃ দঃ বিঃ আঃ

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

অত্র মোকর্দ্দমায় ফরিয়াদীর নিবেদন এই যে ঃ—

১। আসামী ফরিয়াদীর একজন নিকট আত্মীয়।

২। পক্ষগণের কতিপয় আত্মীয় এবং বন্ধুগণ অত্র মোকর্দ্দমা ফরিয়াদী ও আসামীর মধ্যে নিষ্পত্তি করিয়া দিয়াছেন।

৩। এ অবস্থায় ফরিয়াদী আসামীর বিরুদ্ধে আর মোকর্দ্দমা চালাইতে ইচ্ছুক নহেন।

প্রার্থনা—

হুজুর ফরিয়াদীকে অত্র মোকর্দ্দমা উঠাইয়া লইবার অনুমতি দিয়া আসামীকে বেকসুর খালাস দিবার বিহিত আদেশ হয়। ইতি—তাং······

Note :—আসামী এইরূপ দরখাস্তে যোগদান না করিলেও চলিতে পারে; ম্যাজিষ্ট্রেট উপযুক্ত কারণ ব্যতীত মোকর্দ্দমা উঠাইয়া লইবার আদেশ দেন না।

No. 29. Petition by Public Prosecutor withdrawing prosecution. (Sec. 494 Cr. P. C.).

২৯ নং—সরকারী উকীল কর্ত্তৃক মোকর্দ্দমা উঠাইয়া লইবার দরখাস্ত। (ফৌঃ কাঃ বিঃ আইনের ৪৯৪ ধারা)।

হুগলী জেলার সেসন্ জজ্ আদালত।

কেস নং ২৭।১৯৩৬ দণ্ডবিধি আইনের ৩৯৫ ধারা

সম্রাট বনাম আসামী

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

অত্র মোকর্দ্দমায় পাবলিক্ প্রসিকিউটর শ্রী........ আমার নিবেদন এই যে :—

১। নিম্ন আদালতের নথি দৃষ্টে আমার বিশ্বাস যে ১নং আসামী হরি সিংয়ের বিরুদ্ধে অত্র আদালতে ডাকাতির মোকর্দ্দমা চালাইবার সন্তোষজনক প্রমাণ নাই। সুতরাং উক্ত আসামীর বিরুদ্ধে মোকর্দ্দমা চালান অনাবশ্যক।

প্রার্থনা :—

হুজুর নথিস্থ প্রমাণ দৃষ্টে সরকার বাহাদুরকে ১নং আসামীর বিরুদ্ধে মোকর্দ্দমা উঠাইয়া লইবার অনুমতি প্রদান করেন। ইতি—তাং........

CHAPTER VI.

ষষ্ঠ অধ্যায়

No. 30. Petition for Compounding an Offence.
(Sec 345 Cr. P. C.).

৩০ নং—মোকর্দ্দমা আপোষ করিয়া আদালতে জানাইবার দরখাস্ত।

(ফৌঃ কাঃ বিঃ আইনের ৩৪৫ ধারা)

মুন্সীগঞ্জ সব্‌ডিভিসনাল ম্যাজিষ্ট্রেট আদালত।

জেলা নদীয়া।

কেস নং......... সন... .....ধারা ভাঃ দঃ বিঃ আঃ

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

অত্র মোকর্দ্দমার ফরিয়াদী ও আসামীর নিবেদন এই যে :—

১। ফরিয়াদী আসামীর বিরুদ্ধে মানহানীর দাবীতে ভারতীয় দণ্ডবিধি আইনের ৫০০ ধারা মতে অত্র মোকর্দ্দমা উপস্থিত করেন।

২। আসামীও ফরিয়াদীর মধ্যে অত্র মোকর্দ্দমা আপোষ নিষ্পত্তি হইয়া গিয়াছে ও আসামী ফরিয়াদীর নিকট তাহার কৃত কার্য্যের জন্য আন্তরিক অনুতাপ প্রকাশ করিয়াছেন ও ফরিয়াদী তাহাতে সন্তুষ্ট হইয়া মোকর্দ্দমা না চালাইবার মনস্থ করিয়াছেন।

প্রার্থনা :—

হুজুর পক্ষদিগের মধ্যে আপোষ মীমাংসা মতে আসামীকে বেকসুর খালাস দিবার আদেশ দিতে আজ্ঞা হয় ইতি তাং.........

মন্তব্য :—

কতকগুলি মোকর্দ্দমা আদালতের অনুমতি না লইয়া আপোষ করা যায়। আর কতকগুলি মোকর্দ্দমা আদালতের অনুমতি ব্যতীত আপোষ করা যায় না আর অনেক মোকর্দ্দমা আছে যা মোটেই আপোষ করা যায় না। এজন্য ফৌঃ কাঃ বিঃ আইনের ৩৪৫ ধারা দ্রষ্টব্য।

No. 31. Application u/s 562 Cr. P. C. for treating the Accused as a First Offender.

৩১ নং—আসামীকে ফৌঃ কাঃ বিঃ আইনের ৫৬২ ধারা মতে প্রথম দোষী বিবেচনায় জামিন লইয়া খালাস দিবার প্রার্থনায় দরখাস্ত।

......সব্ডিভিসনাল ম্যাজিষ্ট্রেট আদালত।

সম্রাট— বনাম— আসামী—
শ্রীরাজেন্দ্র সিং
পিতা—
পেশা—
গ্রাম—
থানা—

ধারা ৩৭৯ ভাঃ দঃ বিঃ আঃ

অত্র মোকর্দ্দমায় আসামীর নিবেদন এই যে :—

১। আসামী একজন সম্ভ্রান্ত বংশীয় বালক। তাঁহার বয়স ১৭ বৎসর মাত্র। তাঁহার পিতা একজন তালুকদার। আসামী ম্যাট্রিকুলেশন ষ্ট্যাণ্ডার্ড পর্য্যন্ত পড়িয়াছেন।

২। আসামীর যথেষ্ট সম্ভ্রম জ্ঞান আছে! এবং তিনি কুসংসর্গে জড়িত হইয়া ২।৩ টী অসৎ চরিত্র বালকের কুপরামর্শে তাহাদের সহিত একটী ছাগলছানা চুরি করেন তজ্জন্য তিনি অনুতপ্ত ও মর্ম্মান্তিক দুঃখিত। উক্ত ছাগল ছানার মূল্য ॥০ আনা মাত্র।

প্রার্থনা :—

আসামীর পূর্ব্ব চরিত্র, বয়স, বংশমর্য্যাদা প্রভৃতি বিবেচনা করিয়া এবং আসামী কুসংসর্গে লিপ্ত হইয়া অসৎ কাজ করিয়াছেন এবং তজ্জন্য তিনি অত্যন্ত অনুতপ্ত ইহা বিবেচনা করিয়া, আসামীর নিকট উপযুক্ত জামিন লইয়া, এবং হুকুম হইলে আসামী আদালতে উপস্থিত হইয়া দণ্ড গ্রহণ করিবেন এই সর্ত্তে এবং আসামী ইতিমধ্যে অসৎকাজ করিবেন না তজ্জন্য মোচলেকা লইয়া আসামীকে খালাস দিবার আদেশ হয়। ইতি তাং……

No. 32. Petition for furnishing Security for time to pay fine. (Sec. 388 Cr. P. C.).

৩২ নং—জরিমানার টাকা দিবার নিমিত্ত সময়ের প্রার্থনা করিয়া জামিন দিবার দরখাস্ত।

৩৮৮ ফৌঃ কাঃ বিঃ আঃ

…………ম্যাজিষ্ট্রেট্ আদালত।

কেস নং………সন………ধারা ……ভাঃ　　দঃ বিঃ আঃ
বা ফৌঃ ক্যাঃ বিঃ আঃ

সরকার বাহাদুর　　বনাম　　আসামী—
শ্রী—
পিতা—
পেশা—
গ্রাম—
থানা—

জরিমানার টাকা দিতে না পারার কাল তক জামিন দিয়া সময়ের জন্য আবেদন—

অত্র মোকর্দ্দমার আসামী........র নিবেদন এই যে :—

১। অত্র মোকর্দ্দমায় দণ্ডিত আসামী আবেদনকারী শ্রী.......... আমার ৫০৲ (পঞ্চাশ) টাকা জরিমানা দিবার আদেশ হইয়াছে।

২। অত্র আবেদনকারীর নিকট টাকা নাই এবং আবেদনকারী দরিদ্র বিধায় তাহার জরিমানার টাকা সংগ্রহ করিয়া দেওয়া সময় সাপেক্ষ।

৩। অত্র আবেদনকারীর যাহা কিছু জমি জমা আছে তাহা রেহানে আবদ্ধ করিয়া জরিমানার টাকা সংগ্রহ করিতে হইবে।

এই মতে প্রার্থনা :—

(ক) অত্র আবেদনকারীকে জরিমানার টাকা দিতে না পারার কাল তক্ সন্তোষজনক জামিন লইয়া অব্যাহতি দিতে ও উক্ত জরিমানার টাকা ১৫ দিনে দুই সমান কিস্তিতে আদায় দিবার আদেশ দিতে আজ্ঞা হয়। ইতি তাং......

No. 33. Petition for restoration of property claimed by the applicant after conclution of a trial. (Sec 517 Cr. P. C.).

৩৩ নং—মোকর্দ্দমা নিষ্পত্তির পর দাবীকৃত সম্পত্তি ফেরৎ পাইবার প্রার্থনায় ফরিয়াদীর দরখাস্ত।

জেলা বাখরগঞ্জের হবিগঞ্জ সবডিভিসনাল ম্যাজিষ্ট্রেটের আদালত :—

কেস নং......সন......ধারা.........ভাঃ দঃ বিঃ আঃ।

ফরিয়াদী—	আসামী—
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

ফরিয়াদীর নিবেদন এই যে :—

১। আসামী ফরিয়াদীর বাড়ী হইতে...............তারিখে তপশীলে বর্ণিত সম্পত্তি চুরি করে ও চুরি সম্বন্ধে সেই দিবসেই থানায় ডাইরী করা হয়।

২। পুলিশ তদন্ত কালীন তপশীলে বর্ণিত জিনিস্‌গুলি আসামীর গৃহ তল্লাসে প্রাপ্ত হয়।

৩। আসামীর হুজুর আদালতের বিচারে............তারিখে তিন মাস সশ্রম কারাদণ্ডের আদেশ হয়। ঐ হুকুম আপিলে বহাল হইয়াছে।

৪। আপিল আদালতের রায়ের এককিতা জাবেদা নকল অত্রসহ দাখিল হইল।

৫। হুজুর আদালত ও আপিল আদালত সাব্যস্ত করিয়াছেন যে তপশীলে বর্ণিত জিনিষগুলি ফরিয়াদীর এবং আসামী তাহা চুরি করে।

প্রার্থনা :—

হুজুর নথি দৃষ্টে সন্তুষ্ট হইয়া ফোঃ কাঃ বিঃ আইনের ৫১৭ ধারা মতে তপশীলে বর্ণিত জিনিষগুলি ফরিয়াদীকে ফেরৎ দিবার জন্ত পুলিশের উপর বিহিত আদেশ হয়। ইতি তাং......

তপশীল :—

সম্পত্তির বিবরণ—

No. 34. Petition for making deposit instead of furnishing Security. (Sec 513 Cr. P. C.).

৩৪ নং—জামিন না দিয়া জামিনের পরিমাণ টাকা আদালতে জমা দিবার প্রার্থনায় দরখাস্ত।

জেলা ২৪ পরগণা বারাসত মহকুমার সব্‌ডিভিসনাল ম্যাজিষ্ট্রেট সাহেবের আদালত।

কেস নং ....১২।১৯৩৭........ধারা।

ফরিয়াদী।	আসামী।
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

অত্র মোকর্দ্দমার আসামীর নিবেদন এই যে :—

১। ধার্য্য দিনে আদালতে উপস্থিত হইবার জন্য আসামীর উপর ২০০৲ টাকার জামিন দিবার হুকুম হইয়াছে।

২। আসামীর পক্ষে কোন জামিনদার অদ্য তারিখে আদালতে হাজির নাই তজ্জন্য আসামী ২০০৲ টাকা আদালতে জমা দিয়া ফৌঃ কাঃ বিঃ আইনের ৫১৩ ধারা মতে প্রার্থনা করেন যে :—

আসামীর নিকট ২০০৲ টাকা জামিন স্বরূপ গ্রহণপূর্ব্বক তাঁহাকে অব্যাহতি দিয়া মোকর্দ্দমার ধার্য্য দিনে আদালতে উপস্থিত হইবার আদেশ দিতে আজ্ঞা হয়। ইতি তাং......

মন্তব্য :—

Good behaviourএর জন্য জামিনের হুকুম হইলে টাকা জমা দেওয়া চলে না। আসামী ও তাহার পক্ষে যে কোন ব্যক্তি জামিনের পরিমাণ টাকা জমা দিবার জন্য দরখাস্ত করিতে পারেন। আসামী জামিনের সর্ত্ত মত আদালতে উপস্থিত হইলে আদালত আমানতি টাকা ফেরৎ দেন।

No 35. Application notifying address of a convicted person. (Sec 565 Cr. P. C.).

৩৫ নং—আসামী কারাগার হইতে মুক্তি পাইবার পর তাঁহার ঠিকানা জানাইবার জন্য দরখাস্ত। (ফৌঃ কাঃ বিঃ আইনের ৫৬৫ ধারা)

·········মহকুমা ম্যাজিষ্ট্রেট, জেলা······

কেস নং······ সন······ধারা······ফৌঃ কাঃ বিঃ আঃ।

সম্রাট্ বনাম আসামী।

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

অত্র মোকর্দ্দমার আসামীর নিবেদন এই যে :—

১। আসামী দঃ বিঃ আইনের·········ধারা মতে অভিযুক্ত হইয়া ······তারিখে হুজুর আদালতের বিচারে দুই বৎসর সশ্রম কারাদণ্ডে দণ্ডিত হয়। আসামী জেল হইতে কল্য মুক্তি লাভ করিয়াছে। আসামীর উপর হুজুর আদালতের হুকুম থাকে যে আসামী কারামুক্তির পর কোথায় বসবাস করিবে তাহার ঠিকানা ২ বৎসর পুলিশকে অবগত করে।

২। আসামী এক্ষণে তাঁহার পৈত্রিক বসবাসের বাড়ী·········জেলার ············গ্রামে বসবাস করিতেছে।

প্রার্থনা :—

হুজুর আসামীর বসবাসের ঠিকানা ঊর্দ্ধতন পুলিশ কর্ম্মচারির নিকট প্রেরণ করিতে আজ্ঞা হয়। ইতি তাং······

মন্তব্য :—

আসামী যে গ্রামে বসবাস করিবে সেই গ্রাম যে থানার অন্তর্গত সেই থানার দারোগা বাবুর নিকটও এই মর্ম্মে দরখাস্ত করা যাইতে পারে। জেল হইতে অব্যাহতির সময় আসামীকে লিখিত অঙ্গীকার করিতে হয় যে সে যে স্থানে থাকিবে তার ঠিকানা পুলিশে জ্ঞাপন করিবে। এই সম্বন্ধে ইংরাজী form দ্রষ্টব্য।

CHAPTER VII.

সপ্তম অধ্যায়

No. 36. Petition for Bail pending hearing of an Appeal. (Sec 426 Cr. P. C).

৩৬ নং—আপীল দায়ের কালীন জামিনে খালাস হইবার দরখাস্ত। (ফৌঃ কাঃ বিঃ আইনের ৪২৬ ধারা)

আলিপুরের সেসন জজ সাহেবের আদালত ২৪ পরগণা।

কেস নং..........সন......ধারা ৩৭৯ ভাঃ দঃ বিঃ আঃ।

সম্রাট বনাম আসামী।

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

উপরোক্ত মোকর্দ্দমার আসামীর নিবেদন এই যে :—

১। আসামী বারাসত মহকুমার সব্ ডিভিসনাল ম্যাজিষ্ট্রেট্ আদালতে ভাঃ দঃ বিঃ আইনের ৩৭৯ ধারা মতে অভিযুক্ত হইয়া তাহার তিন মাস সশ্রম কারাবাসের আদেশ হইয়াছে।

২। ঐ আদেশের বিরুদ্ধে আসামী হুজুর আদালতে অত্র আপীল দায়ের করিলেন।

৩। আসামী মোকর্দ্দমা সংক্রান্ত গাভী চুরি করেন নাই। তিনি উক্ত গাভীকে বারাসতের হাটে·········তারিখে ১৫৲ টাকা মূল্যে খরিদ করেন। এ বিষয় তিনি নিম্ন আদালতে ৬ জন সাক্ষীর জবানবন্দী দ্বারা প্রমাণ করিয়াছেন।

৪। আসামী সম্পূর্ণ নির্দ্দোষী। তিনি একজন Bonafide purchaser for value অর্থাৎ তিনি সরল বিশ্বাসে গাভীটি উপযুক্ত মূল্যে ক্রয় করেন। ঐ গাভীটি চোরাই মাল এ সম্বন্ধে আসামীর অণুমাত্রও সন্দেহ উপস্থিত হয় নাই।

৫। আসামীর ৭০ বিঘা নাখেরাজ জমি আছে এবং তিনি তাঁহার স্ত্রীপুত্র লইয়া তাঁহার গ্রামে বসবাস করেন। তাঁহার ফেরার হইয়া পলাইয়া যাইবার কোন সম্ভাবনা বা অভিপ্রায় নাই।

প্রার্থনা :—

উপযুক্ত জামিনে আসামীকে আপীল শুনানির কালতক খালাস দিবার বিহিত আদেশ হয়। ইতি তাং·········

মন্তব্য :—

এইরূপ প্রার্থনা আপীলের অজুহাতের দরখাস্তেও করা যাইতে পারে। তাহা হইলে ভিন্ন দরখাস্ত দাখিলের আবশ্যকতা থাকে না।

No. 37. Petition for bail u/s 498 Cr. P. C.

৩৭ নং—ফৌঃ কাঃ বিঃ আইনের ৪৯৮ ধারা মতে জামিন পাইবার জন্য সেসন জজ আদালতে দরখাস্ত।

আলিপুরের সেসন্ জজ্ সাহেবের আদালত।

বারাসতের সবডিভিসনাল আদালতের কেস নং............সন.........

(মোকর্দ্দমা বারাসত সব্ডিভিসনাল ম্যাজিষ্ট্রেট সাহেবের আদালতে দায়ের আছে) দঃ বিঃ আইনের ৩৯৫ ধারা।

সম্রাট বনাম্ আসামী।

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

দরখাস্তকারী আসামীর নিবেদন এই যে :—

১। আসামী উপরোক্ত মোকর্দ্দমায় ডাকাতি অপরাধে অভিযুক্ত হইয়া পুলিশ কর্ত্তৃক ঘটনার দুই সপ্তাহ পরে গ্রেপ্তার হন।

২। আসামী নিম্ন আদালতে.........তারিখে জামিনে খালাস পাইবার প্রার্থনায় দরখাস্ত করেন কিন্তু মাননীয় সব্ডিভিসনাল ম্যাজিষ্ট্রেট বাহাদুর.........তারিখে আসামীর জামিনের দরখাস্ত নামঞ্জুর করিয়াছেন।

৩। আসামী ঐ হুকুমের বিরুদ্ধে নিম্নলিখিত অজুহাতে হুজুরাদালতে জামিনের দরখাস্ত করিতেছেন।

অজুহাত।

১। দরখাস্তকারীর নাম F. I. R. এ উল্লেখ নাই।

২। দরখাস্তকারীর গৃহ তল্লাসে পুলিশ কোন চোরাই মাল বা সন্দেহ

জনক অন্য কোন জিনিস্ প্রাপ্ত হন নাই।

৩। যে বাড়ীতে ডাকাতি হয় সেই বাড়ীর কোনও ব্যক্তি আসামীকে সনাক্ত করেন নাই।

৪। আসামী একজন জোদ্দার তাঁহার ৩০ বিঘা জমি আছে এবং তিনি স্ত্রী পুত্রাদি লইয়া তাঁহার বাড়ীতে গৃহস্থভাবে বসবাস করেন।

৫। আসামীর তাঁহার গ্রাম পরিত্যাগ পূর্ব্বক অন্যত্র পলাইবার কোন সম্ভাবনা বা কারণ নাই।

প্রার্থনা—

হুজুর নিম্ন আদালতের নথি তলব পূর্ব্বক সরকার পক্ষের উকিল ও আসামীর পক্ষের বক্তব্য শ্রবণান্তর আসামীর নিকট উপযুক্ত জামিন গ্রহণে তাঁহাকে খালাস দিবার আদেশ হয়। ইতি তাং......

No. 38. Bail petition before a Magistrate during Police Enquiry in a case. (Sec 496 Cr. P. C.).

৩৮ নং—পুলিশ তদন্তকালীন জামিনে খালাস হইবার প্রার্থনায় আসামী কর্ত্তৃক ম্যাজিষ্ট্রেটের নিকট দরখাস্ত।

শিবাদহ পুলিশ ম্যাজিষ্ট্রেট্ আদালত জেলা ২৪ পরগণা।

সম্রাট বনাম আসামী।

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা-

দরখাস্তকারী আসামীর নিবেদন এই যে :—

১। পুলিশ সন্দেহ করিয়া······· তারিখে আসামীকে গ্রেপ্তার করেন, তাহার পর এক মাসের উপর গত হইয়াছে। কিন্তু দারোগা বাবু তদারক শেষ করিয়া এখনও চার্জ্জ সিট (Charge-sheet) দাখিল করেন নাই।

২। আসামীকে ডাকাতি অপরাধে সন্দেহ করা হইয়াছে কিন্তু পুলিশ তাঁহার বাড়ী খানাতল্লাসে কোন চোরাই মাল বা কোনও সন্দেহজনক দ্রব্য প্রাপ্ত হন নাই।

৩। ফরিয়াদী বা তাঁহার বাড়ীর কোন ব্যক্তি অদ্যাবধি আসামীকে ডাকাতিতে লিপ্ত ছিল বলিয়া সনাক্ত করেন নাই।

৪। ফরিয়াদীর পক্ষের তদ্বিরকার ঝড়ু মিঞার সহিত জমি জমা লইয়া বহুদিন যাবৎ আসামীর মোকর্দ্দমা চলিতেছে।

৫। আসামীর অনুমান উক্ত ঝড়ু মিঞা ষড়যন্ত্র করিয়া নির্দ্দোষী আসামীকে অত্র মোকর্দ্দমায় জড়িত করিবার চেষ্টা করিতেছে।

প্রার্থনা :—

হুজুর পুলিশের কাগজাদি তলবপূর্ব্বক পাঠান্তে আসামীকে জামিনে খালাস দিবার বিহিত আদেশ দেন। ইতি তাং······

No. 39. Bail petition before a Magistrate in a pending case. (Sec. 496 Cr. P. C.).

৩৯ নং—ম্যাজিষ্ট্রেট আদালতে মোকর্দ্দমা দায়ের কালীন জামিনে খালাস পাইবার নিমিত্ত আসামীর দরখাস্ত।

নড়াইল সবডিভিসনাল ম্যাজিষ্ট্রেট সাহেবের আদালত।

জেলা যশোহর।

কেস নং······সন······ধারা······ ··ফৌঃ দঃ বিঃ আঃ ৩৯৫ ধারা।

সম্রাট বনাম আসামী।

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

আসামীর নিবেদন এই যে :—

১। আসামীর নাম E. I. R. এ উল্লেখ নাই, তাঁহাকে ফরিয়াদীর বাড়ীর কোন ব্যক্তি সনাক্ত করে নাই।

২। তাঁহার গৃহ তল্লাস করিয়া পুলিশ সন্দেহজনক কোনও দ্রব্য পান নাই।

৩। আসামী স্ত্রী পুত্র লইয়া তাঁহার গ্রামে বসবাস করিতেছেন। তাঁহার গ্রাম ত্যাগ করিয়া অন্যত্র পলায়ন করিবার অভিপ্রায় নাই।

৪। ... ...

প্রার্থনা—

হুজুর সরকার পক্ষের উকিল ও আসামীর পক্ষের উকিলের বক্তৃতা শ্রবণান্তর নথিস্থ কাগজাদি দৃষ্টে আসামীকে উপযুক্ত জামিনে খালাস দিবার বিহিত আদেশ দিতে আজ্ঞা হয়। ইতি তাং......

মন্তব্য :—

যদি আসামী এমন কোন অপরাধে অভিযুক্ত হয় যাহাতে তাহার প্রাণ দণ্ড বা যাবজ্জীবন দীপান্তর হইতে পারে তাহা হইলে আদালত আসামীকে জামিনে খালাস দেন না। তবে আসামী রুগ্ন, স্ত্রীলোক বা ১৬ বৎসরের অনধিক বয়স্ক হইলে আদালত তাহাকে জামিনে খালাস দিতে পারেন।

No. 40. Petition by a Surity for his discharge. (Sec. 502 Cr. P. C.).

৪০ নং—জামিনদারের জামিনের দায় হইতে অব্যাহতি পাইবার নিমিত্ত ফৌঃ কাঃ বিঃ আইনের ৫০২ ধারা মতে দরখাস্ত।

.........ম্যাজিষ্ট্রেট আদালত।

কেস নং......সন .....ধারা......ভাঃ দঃ বিঃ অথবা ফৌঃ কাঃ বিঃ

দরখাস্তকারী	বনাম	প্রতিপক্ষ।
শ্রী—		শ্রী—
পিতা—		পিতা—
পেশা—		পেশা—
গ্রাম—		গ্রাম—
থানা—		থানা—

জামীনদারের জামীনের দায় হইতে অব্যাহতির প্রার্থনায় দরখাস্ত।

দরখাস্তকারী শ্রীযদুনাথ ঘোষ—জামিনদার। আমার নিবেদন এই যে :—

১। হুজুর আদালত আসামীকে ২০০৲ টাকা জামীনে খালাস দিবার আদেশ দিয়াছিলেন। ....আসামীকে মোকর্দ্দমার তারিখে অর্থাৎ ২।৭।৩৫ তারিখে হাজির করিবার দায়িত্বে আবেদনকারী ২০০৲ টাকার পরিমাণ জামিননামা সম্পাদন করিয়া দেন। আবেদনকারী হুজুর আদালতের জনৈক মোক্তার হইতেছেন।

২। উক্ত আসামী একান্ত নিঃস্ব ও তাহার কোন নির্দ্দিষ্ট বাসস্থান নাই।

৩। আবেদনকারীর যৎসামান্য আয়, আসামীর তাহার কথিত মত মোকর্দ্দমার ধার্য্য তারিখে উপস্থিত না হইলে আবেদনকারীর পক্ষে বিশেষ আশঙ্কার কারণ হইবার সম্ভাবনা।

৪। উক্ত আসামী অন্য আদালতে হাজির আছে, এবং অত্র আবেদনকারী তাঁহাকে অত্র আদালতে সমর্পণ করিতেছেন।

প্রার্থনা—

আবেদনকারীকে জামিনের দায় ও তৎসংক্রান্ত সর্ব্ববিধ দায় হইতে অব্যাহতি দিবার আদেশ দিতে আজ্ঞা হয়। ইতি তাং......

দ্রষ্টব্য :--

জামীন হওয়া সরকার বাহাদুর ও জামীনদারের মধ্যে পারস্পরিক চুক্তিমাত্র। এজন্য জামিননামার সর্ত্ত ভঙ্গ না হওয়া পর্য্যন্ত জামীনদার যে কোন সময়ে জামীনের দায় হইতে অব্যাহতি পাইবার প্রার্থনা করিতে পারেন; অর্থাৎ:—এইরূপ অব্যাহতির আবেদন করিলে এ বিষয়ে আসামীর কোন বক্তব্য না শুনিয়াই ম্যাজিষ্ট্রেট উক্ত আবেদন গ্রাহ্য করিতে বাধ্য। এইরূপ দরখাস্ত করিলে জামীননামা নাকচ হইবে।

No. 41. Petition for remission of penalty wholly or in part on forfeiture of Bond.
(Sec. 514 Cr. P. C.).

৪১ নং—জামিননামা বাজেয়াপ্ত হইয়া অর্থদণ্ড হইলে তাহা সম্পূর্ণ বা আংশিক মহকুবের প্রার্থনায় দরখাস্ত।
(ফৌঃ কাঃ বিঃ আইনের ৫১৪ ধারা)

............ম্যাজিষ্ট্রেট আদালত।

কেস নং......সন......ধারা......ফৌঃ কাঃ বিঃ আঃ বা ভাঃদঃ বিঃ আঃ

ফরিয়াদী	আসামী
শ্রী—	শ্রী—
পিতা—	পিতা—
পেশা—	পেশা—
গ্রাম—	গ্রাম—
থানা—	থানা—

হুজুর আদালতের মোক্তার শ্রীহরকৃষ্ণ পালের নিবেদন এই যে :—

১। অত্র মোকর্দ্দমার আসামীকে·········তারিখে আদালতে উপস্থিত করিবার নিমিত্ত দরখাস্তকারী ১০০৲ টাকার একখানি জামিননামা সম্পাদন করেন। আসামী ধার্য্য দিনে হঠাৎ কলেরা রোগে আক্রান্ত হইয়া আদালতে উপস্থিত হইতে পারেন নাই। আসামী তাঁহার পীড়া প্রমাণের জন্য ডাক্তারের সার্টিফিকেট আনিয়াছেন, তাহা অত্র সহ দাখিল হইল।

২। হুজুর মোকর্দ্দমার ধার্য্য দিনে আসামী উপস্থিত না হওয়ায় জামিননামা বাজেয়াপ্ত করিয়া দরখাস্তকারীকে জামিননামার সর্ত্ত অনুযায়ী ১০০৲ টাকা দণ্ড দিবার হুকুম দিয়াছেন।

৩। দরখাস্তকারী হুজুর আদালতের জনৈক মোক্তার। তাঁহার আয় অতি সামান্য এই সকল বিষয় ও আসামী হঠাৎ পীড়ায় আক্রান্ত হইয়াছিলেন বিবেচনা করিয়া দরখাস্তকারীকে দণ্ডের দায় হইতে অব্যাহতি দিবার অথবা তাঁহাকে যৎসামান্য জরিমানা করিতে আজ্ঞা হয়। ইতি—তাং···

মন্তব্য :—

আদালত ইচ্ছা করিলে জামিনদারকে একেবারে মাপ করিতে পারেন বা তাঁহার যৎসামান্য অর্থদণ্ড করিতে পারেন।

No. 42. Petition for further enquiry into a complaint dismissed. (Sec. 436 Cr. P. C.).

নং ৪২—মোকর্দ্দমা ডিস্‌মিস্‌ হইবার পর পুনরায় তদন্তের প্রার্থনায় দরখাস্ত।

(ফৌঃ কাঃ বিঃ আইন ৪৩৬ ধারা)

ফৈজাবাদ সেসন জজ আদালত।

কেস নং ৩৫ সন ১৯৩৪, সাবডিভিসান্‌ ম্যাজিষ্ট্রেট আদালত ফৈজাবাদ।

ফরিয়াদী—		আসামী —
(ক)	বনাম	(খ)
(ক) (আবেদনকারী)		
পিতা—		পিতা—
পেশা—		পেশা—
গ্রাম—		গ্রাম—
থানা—		থানা—
ইত্যাদি—		ইত্যাদি—

মোকর্দ্দমা বিনা বিচারে ডিস্‌মিস্‌ হইলে পুনরায় তদন্তের ও বিচারের প্রার্থনা :—

ফরিয়াদী আবেদনকারীর নিবেদন এই যে :—

১। (ক) আবেদনকারী নিম্ন তপশীল বর্ণিত জমি চাষ করিবার কালে বিনা কারণে ও বিনা উত্তেজনায় আসামী (খ) কর্ত্তৃক মারাত্মকভাবে আহত হয়।

(২) আবেদনকারী ফৈজাবাদ মহকুমা আদালতে আসামীর বিরুদ্ধে ফৌজদারী মোকর্দ্দমা দায়ের করিয়া দঃ বিঃ আইনের ৩২৩ ধারা মতে তাহার

নামে সমন জারীর প্রার্থনা করে। দরখাস্তকারী দরখাস্ত দায়ের করিবার কালে তাহার শরীরের জখমের চিহ্ন ম্যাজিষ্ট্রেট্ বাহাদুরকে দেখাইয়াছিল।

(৩) মাননীয় ম্যাজিষ্ট্রেট্ বাহাদুর ফরিয়াদীর এজাহার লইবার পর পুলিশের উপর তদন্তের আদেশ দিয়াছিলেন, এবং পুলিশের রিপোর্ট পাইবার পর······তারিখে ফরিয়াদীর দরখাস্ত ডিস্‌মিস্ করেন।

(৪) পুলিশের সব্ ইনস্‌পেক্টার সাহেব সরজামিনে তদন্তের জন্য না যাইয়া থানায় বসিয়া কেবল ফরিয়াদী ও তাঁহার ভ্রাতার এজাহার লইয়াছিলেন। আবেদনকারী পুলিশ সব্ ইনস্‌পেক্টার মহাশয়ের নিকট অপরাপর সাক্ষ্য দিবার জন্য মাত্র এক দিনের সময়ের প্রার্থনা করিয়াছিলেন. কিন্তু তাহার সে প্রার্থনা নামঞ্জুর হইয়াছিল।

(৫) এই ঘটনা বাজারের সম্মুখে ঘটিয়াছিল, এবং বহু সম্ভ্রান্ত দোকানদার ও ব্যবসায়ী এই ঘটনা প্রত্যক্ষ করিয়াছিলেন এবং আবেদনকারীর দরখাস্তে তাঁহাদের নাম ও পরিচয় লিখিত হইয়াছিল।

(৬) মাননীয় মহকুমা ম্যাজিষ্ট্রেট্ মহোদয় পুলিশ রিপোর্ট পেশ হইবার পর দরখাস্তকারী যে সকল সাক্ষী আদালতে উপস্থিত করেন তাঁহাদিগের এজাহার লইতে অসম্মত হন।

(৭) সুবিচারের জন্য এই বিষয়টীর বিশেষ ভাবে তদন্তের প্রয়োজন।

প্রার্থনা :—

রেকর্ড দৃষ্টে এবং আসামীকে কারণ দর্শাইবার সুযোগ দিয়া মোকর্দ্দমা পুনরায় বিশেষভাবে তদন্তের জন্য আদেশ দিতে আজ্ঞা হয়। ইতি তাং···

তপশীল জমির বিবরণ।

দ্রষ্টব্য :—

এই আবেদন সেসন জজ আদালতে অথবা জেলা ম্যাজিষ্ট্রেট সাহেবের নিকট করা যাইতে পারে। এই দুইটী আদালতের বিচারের তুল্য অধিকার

আছে। এক আদালতে দরখাস্ত না মঞ্জুর হইলে অন্য আদালতে পুনরায় দরখাস্ত করা চলে না, তবে প্রয়োজনবোধে পরে হাইকোর্টে আবেদন করা যাইতে পারে।

No. 43. Petition u/s 437 Cr. P. C. for revision of an order of discharge and for commitment.

নং ৪৩—আসামীর খালাসের আদেশ রহিত পূর্ব্বক বিচারের জন্য আসামীকে দায়রা আদালতে সোপর্দ্দ করিবার প্রার্থনায় দরখাস্ত।

(ফৌঃ কাঃ বিঃ আইনের ৪৩৭ ধারা)

.........ডিষ্ট্রিক্ট জজ (অথবা)

ডিষ্ট্রীক্ট ম্যাজিষ্ট্রেট আদালত।

কেস নং.........সন...............ধারা ৩০৪ ভাঃ দঃ বিঃ আইন

সম্রাট।	বনাম	প্রতিপক্ষ।
আবেদনকারী।		
মৃত— র		বলদেব রাও
পিতা—		পিতা—
পেশা—		পেশা—
গ্রাম—		গ্রাম—
থানা—		থানা—

ডিসমিসের আদেশ রহিত পূর্ব্বক মোকর্দ্দমা বিচারের জন্য দায়রা সোপর্দ্দের প্রার্থনা :—

আবেদনকারীর নিবেদন এই যে :—

১। উক্ত নং ৮ .....মোকর্দ্দমায় সুবিজ্ঞ মহকুমা আদালত অন্যায় মতে আসামীকে খালাসের হুকুম দিয়াছেন। উক্ত আসামী অপরাধযুক্ত নরহত্যা অপরাধে ভারতীয় দণ্ডবিধি আইনের ৩০৪ নং ধারা মতে অভিযুক্ত

হইয়াছিল। উক্ত মোকর্দ্দমা কেবলমাত্র সেসন্ আদালতে বিচারযোগ্য ছিল।

২। মৃত ব্যক্তিকে হত্যা করিবার আন্তরিক অভিপ্রায় না থাকিলে 'দা'য়ের আঘাতে যে মৃত্যু ঘটিতে পারে তাহা জানিয়াও আসামী বিনা উত্তেজনায় মৃতের দক্ষিণ স্কন্ধে 'দা'য়ের দ্বারা গুরুতরভাবে আঘাত করিয়াছিল। উহা নিম্নোক্ত তিন জন প্রত্যক্ষ সাক্ষী প্রমাণ করিয়াছিলেন।

সাক্ষীর নাম

(১)........

(২).........

(৩).........

৩। আবেদনকারী উক্ত মৃত.........ব্যক্তির পিতা এবং আসামীর বিরুদ্ধে উক্ত মোকর্দ্দমা আবেদনকারীর উদ্যোগেই দায়ের হইয়াছিল।

এমতে **প্রার্থনা** যে নিম্ন আদালতের নথি তলব করিয়া এবং আসামীকে কারণ দর্শাইবার সুযোগ দিয়া তাহাকে দায়রা (সেসন) আদালতে দঃ বিঃ আইনের ৩০৪ ধারা মতে বিচারের জন্য সোপর্দ্দ করিবার আদেশ দিতে আজ্ঞা হয়। ইতি তাং......

দ্রষ্টব্য :—

কেবল সেসন আদালতের বিচার্য্য অপরাধ স্থলেই ৪৩৭ ধারার দরখাস্ত হইতে পারে, অন্যত্র নহে। সেসন জজ্ অথবা জেলা ম্যাজিষ্ট্রেট সরাসরি সেসনে সোপর্দ্দ করিতে পারেন।

চার্জ্জ frame করিবার পরে বিচারে নির্দ্দোষ সাব্যস্ত হইয়া আসামী মুক্তি পাইলে (acquitted হইলে) এই দরখাস্ত চলিতে পারে না। কেবল যেখানে চার্জ্জের পূর্ব্বেই আসামী খালাস্ পায় (discharged হয়) সেইখানে এইরূপ দরখাস্ত চলিতে পারে।* জেলা ম্যাজিষ্ট্রেট দরখাস্ত

* *Baijnath Pandey* v. *Gauri kanta Mandal* 20 Cal. 633.

অগ্রাহ্য করিলে তৎপরে সেসন জজের নিকট আর এইরূপ দরখাস্ত করা যায় না। জেলা ম্যাজিষ্ট্রেট বা সেসন জজ দরখাস্ত অগ্রাহ্য করিলে হাইকোর্টে দরখাস্ত করা যাইতে পারে।

No. 44. Reporting attendance to Sessions Court by a Juror or an Assessor summoned.

৪৪ নং—জুরি বা এ্যাসেসর সমনানুযায়ী আদালতে উপস্থিত হইয়া দায়রা আদালতে হাজিরা দেওয়া।

যশোহর সেসন জজ সাহেবের আদালত।

কেস নং..........সন... ....ধারা ৩০২ ভাঃ দঃ বিঃ আইন

সম্রাট বনাম আসামী

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

ইত্যাদি।

আমি শ্রীরামচরণ ঘোষ উক্ত মোকর্দ্দমায় জুরি (বা এ্যাসেসর) স্বরূপে কার্য্য করিবার জন্য সমন পাইয়াছি ও আমি হুজুরের আদালতে অদ্য হাজির আছি। নিবেদন ইতি তাং......

Note :—জুরি বা এ্যাসেসর আদালতে হাজির হইয়া যদি কোন বিশেষ কারণবশতঃ মোকর্দ্দমার কার্য্য করিতে অক্ষম হন, তাহা হইলে তিনি উপযুক্ত কারণ দেখাইয়া অব্যাহতি পাইবার নিমিত্ত সেসন জজ সাহেবের নিকট প্রার্থনা করিতে পারেন। আদালত কারণ উপযুক্ত বিবেচনা করিলে দরখাস্ত মঞ্জুর করেন।

No. 45, Petition of objection to a person chosen by lot as a Juror. (Sec 277 Cr. P. C.).

নং ৪৫—জুরি নির্ব্বাচনে আপত্তির দরখাস্ত।
(ফৌঃ কাঃ বিঃ আইন ২৭৭ ধারা)

……সেসন জজ আদালত

সম্রাট্ বনাম আসামী—

শ্রী —

পিতা—

পেশা—

গ্রাম—

থানা—

কেস নং ১২।১৯৩৫ সাল দঃ বিধি আইনের ৩০২ ধারা।

জুরি নির্ব্বাচনে আপত্তির আবেদন :—

আবেদনকারী আসামী শ্রী ……র অত্র মোকর্দ্দমায় নিবেদন এই যে ……থানার নিবাসী শ্রী……অত্র মোকর্দ্দমার সুরতি দ্বারা (by lot) জুরি নির্ব্বাচিত হইয়াছেন। অত্র আবেদনকারী তাঁহার নির্ব্বাচনের বিরুদ্ধে নিম্নলিখিত হেতুবাদে আপত্তি করিতেছেন।

হেতু :—

১। উক্ত জুরি শ্রী……নিহত ব্যক্তির আত্মীয়। নিহত ব্যক্তির মৃত্যু সম্বন্ধে নানা প্রকার জনরবে তাঁহার মন স্বভাবতঃই পক্ষপাতদোষে দুষ্ট হইয়াছে।

২। উক্ত জুরি শ্রী……বর্ত্তমান মোকর্দ্দমা পরিচালনে বিশেষরূপ স্বার্থযুক্ত, এবং তাঁহার জ্ঞাতি ভ্রাতা শ্রী……সর্ব্বপ্রথমে উক্ত ঘটনার সংবাদ (F. I. R.) থানাতে এজাহার করেন।

৩। বর্ত্তমান মোকর্দ্দমার সাক্ষ্য প্রমাণাদি ও আইন সম্যকরূপে বুঝিবার উপযুক্ত বিদ্যা বা শিক্ষা উক্ত জুরির নাই।

প্রার্থনা

উক্ত জুরি শ্রী……মহাশয়কে পরিত্যাগ পূর্ব্বক তৎস্থানে অন্য কোন উপযুক্ত ব্যক্তিকে জুরি মনোনীত করিবার আদেশ দিতে আজ্ঞা হয় ইতি।

তাং………

দ্রষ্টব্য :—

আদালতে নির্দ্দিষ্ট জুরির নাম প্রকাশ করা মাত্রই মৌখিক বা লিখিত আপত্তি করিতে হয়।

No. 46. Petition by a Juror or an Assessor for exemption from liability to serve as a Juror or an Assessor in the periodical Session.

(Sec 330, Cr. P. C.).

নং ৪৬—পরবর্ত্তী সেসন termএ জুরি বা এ্যাসেসর রূপে কার্য্য করিতে না হয় তজ্জন্য অব্যাহতি পাইবার দরখাস্ত।

(ফৌঃ কাঃ বিঃ আইন ৩৩০ ধারা)

আলিপুরের সেসন জজ সাহেবের আদালত।

কেস নং …… সন …ধারা ৩০২ ভাঃ দঃ বিঃ আঃ

সম্রাট বনাম আসামী

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

ইত্যাদি—

উপরোক্ত মোকর্দ্দমার জনৈক জুরি (বা এ্যাসেসর) শ্রীরমানাথ ঘোষ এম, বি, ডাক্তারের নিবেদন এই যে :—

আমি উক্ত মোকর্দ্দমায় ৪৫ দিন জুরির (বা এ্যাসেসরের) কার্য্য করিয়াছি। দীর্ঘকাল জুরির (বা এ্যাসেসরের) কাজ নির্ব্বাহ জন্য আদালতে হাজির থাকায় আমার ব্যবসায়ের বিশেষ ক্ষতি হইয়াছে এবং আমিও মানসিক ও শারিরিক পরিশ্রমজনিত দুর্ব্বলতা বোধ করিতেছি।

প্রার্থনা :—

অনুগ্রহ প্রকাশে আমাকে পরবর্ত্তী সেসন termএ জুরির (বা এ্যাসেসরের) কার্য্য হইতে অবসর দিবার আদেশ হয়। ইতি তাং……

No. 47. Petition by a Juror or an Assessor for remission of fine. (Sec 332 Cr. P. C.).

নং ৪৭—জরিমানা মকুব জন্য জুরি বা এ্যাসেসরের দরখাস্ত। (ফৌঃ কাঃ বিধি ৩৩২ ধারা)

মজঃফরপুরের সেসন জজ সাহেবের আদালত।

কেস নং… সন… ……ধারা ৩২৫ ভাঃ দঃ বিঃ আঃ

সম্রাট বনাম আসামী

শ্রী—

পিতা—

পেশা—

গ্রাম—

থানা—

ইত্যাদি—

অত্র মোকর্দ্দমার জুরি (বা এ্যাসেসর) শ্রী……আমার নিবেদন এই যে :—

১। আমি ২।৭।৩২, ৩।৭।৩২, ৪।৭।৩২ তারিখে আদালতে হাজির থাকিয়া জুরির (বা এ্যাসেসরের) কার্য্য করি। হঠাৎ ৫।৭।৩২ তারিখে

কলেরা রোগে আক্রান্ত হওয়ায় দুই দিন আদালতে উপস্থিত হইতে পারি নাই, তজ্জন্য হুজুর আমার ৫০ টাকা অর্থদণ্ড করিয়াছেন।

২। আমি অত্র সহ ডাক্তারের সার্টিফিকেট দাখিল করিলাম, ইহা হইতে আমার পীড়ার বিষয় প্রমাণ হইবে।

প্রার্থনা

সমুদয় অবস্থা বিবেচনা করিয়া আমাকে জরিমানার দায় হইতে অব্যাহতি দিবার আদেশ হয়। ইতি তাং·····

No. 48. Petition by a proposed Juror or an Assessor for exemption from liability to serve as a Juror or as an Assessor. (Sec. 320 Cr. P. C.).

নং ৪৮—জুরি বা এ্যাসেসরের লিষ্ট হইতে নাম কাটিয়া দিবার প্রার্থনায় দরখাস্ত।

(ফৌঃ কাঃ বিঃ আইনের ৩২০ ধারা)

ফরিদপুরের সেসন জজ সাহেবের আদালত।

শ্রী ·····পিতা······পেশা······গ্রাম·····থানা······।

আমার নিবেদন এই যে জুরি বা (এ্যাসেসর) সম্বন্ধে যে তালিকা প্রস্তুত করিয়া প্রকাশ করা হইয়াছে তাহাতে আমার নাম আছে। আমার বয়স ৬৫ বৎসর। আমার শ্রবণ শক্তি হ্রাস পাইয়াছে এবং আমার বিচার করিবার ক্ষমতা যথেষ্ট কমিয়া গিয়াছে।

প্রার্থনা :—

আমার নাম উক্ত তালিকা হইতে remove করিয়া দিবার বিহিত আদেশ হয়। ইতি, তাং···

No. 49. Petition by Lunatic's guardian informing the Court of Session that the accused is a Lunatic. (Secs 464, & 465 Cr. P. C.).

নং ৪৯—উন্মাদের উন্মত্ততার বিষয় জানাইয়া তাহার অভিভাবক কর্ত্তৃক সেসন আদালতে দরখাস্ত। (ফৌঃ কাঃ বিঃ আইনের ৪৬৪ ও ৪৬৫ ধারা)

..... সেসন জজ আদালত।

কেস নং... সন........ ধারা ৩০২ ভাঃ দঃ বিঃ আইন।

সম্রাট। বনাম— আসামী—

হরি ডোম।
পিতা—কানু ডোম।
পেশা—চাকুরী।
গ্রাম—পাতিপুর।
থানা—মিরপুর।
ইত্যাদি—

উন্মাদের উন্মত্ততার বিষয় অনুসন্ধানের প্রার্থনা :—

আসামীর পিতা শ্রীকানু ডোমের নিবেদন এই যে :—

১। আমার পুত্র হরি ডোম এই মোকর্দ্দমার আসামী। আমি আদালতে জানাইতেছি, যে এই মোকর্দ্দমার আসামী, হরি ডোম উন্মাদ।

২। আসামী আমার নিকট বসবাস করে এবং সে গত ৭ বৎসর যাবৎ উন্মাদ রোগগ্রস্থ ও অপ্রকৃতিস্থ। আসামী এই মোকর্দ্দমায় আত্মপক্ষ সমর্থন করিতে সম্পূর্ণ অক্ষম।

প্রার্থনা :—

অত্র মোকর্দ্দমা বিচারের পূর্ব্বে আসামীকে জেলার সিভিল সার্জ্জন অথবা লোক্যাল গভর্ণমেণ্ট কর্ত্তৃক নির্দ্ধারিত কোন ডাক্তার দ্বারা

পরীক্ষা করাইয়া এবং সেই ডাক্তারের এজাহার এবং অন্যান্য সাক্ষ্য প্রমাণ গ্রহণান্তে জুরির সাহায্যে আসামীর ক্ষিপ্ততা সম্বন্ধে বিচার করিতে আজ্ঞা হয়। ইতি—তাং……

দ্রষ্টব্য :—দায়রা আদালতে এইরূপ দরখাস্ত করা যাইতে পারে। দায়রার জজ জুরি অথবা এ্যাসেসারদের সাহায্যে আসামীর উন্মত্ততার বিষয় প্রথমে বিচার করিবেন। সম্রাট পক্ষকে প্রমাণ করিতে হইবে যে আসামী আত্মপক্ষ সমর্থণে সক্ষম।

No. 50. Petition by an European British Subject u/s 275 Cr. P. C. praying that the majority of Jurors for his trial shall be European or American.

(Sec. 275 Cr. P. C.)

নং ৫০—ইউরোপীয়ান ব্রিটিশ সাব্‌যেক্টের দায়রা বিচার জন্য জুরি নির্ব্বাচনের দরখাস্ত।

(ফৌঃ কাঃ বিঃ আইনের ২৭৫ ধারা)

……সেসন জজ্ বাহাদুর বরাবরেষু—

ফৌজদারী কেস নং ৭২।৩৫ দঃ বিঃ আঃ ৩০২ ধারা

ফরিয়াদী— আসামী—

ভারত সম্রাট। মিঃ ডব্‌লিউ, টি, জন্।

আসামীর পক্ষে ফৌজদারী দণ্ড বিধি আইনে ২৭৫ ধারা অনুসারে দরখাস্ত :—

আসামী ডব্‌লিউ, টি, জনের নিবেদন এই যে :—

১। আসামী ফুলবাড়ী চা বাগানের এ্যাসিষ্টেণ্ট ম্যানেজার। তিনি ইচ্ছা পূর্ব্বক ঐ বাগানের কুলি ধুবু বেরাকে অস্ত্র দ্বারা আঘাত পূর্ব্বক হত্যা করার অপরাধে ফৌজদারী দণ্ড বিধি আইনের ৩০২ ধারা মতে অভিযুক্ত হইয়াছেন

২। মৃত ধুবু বেরার ভ্রাতা রামদীন বেরা ফরিয়াদীর অভিযোগে এই মোকর্দ্দমা স্থাপিত হয়।

৩। আসামী জনৈক European British Subject.

৪। আসামীর বিশ্বাস যে তাঁহার European বা American জুরি দ্বারা বিচার না হইলে এই মোকর্দ্দমার সুবিচার হইবে না। অন্ততঃ জুরি সংখ্যার অর্দ্ধেকের অধিক European অথবা American হওয়া নিতান্ত আবশ্যক।

প্রার্থনা :—

ফৌজদারী কার্য্য বিধি আইনের ২৭৫ ধারা মতে আদালত জুরি নির্ব্বাচন সময়ে জুরি সংখ্যার অর্দ্ধেকের অধিক European অথবা American জুরি নির্ব্বাচন করিতে আজ্ঞা হয়। ইতি তাং···

No. 51. Petition of Appeal to Sessions Judge by an European British Subject against Magistrate's finding u/s 443 Cr. P. C.

নং ৫১—ইউরোপীয়ান ব্রিটিশ সাব্‌যেক্ট কর্ত্তৃক ফৌঃ কাঃ বিঃ আইনের ৪৪৩ ধারা মতে দরখাস্ত।

জেলা মজঃফরপুরের সেসন্ জজ আদালত

জেলা মজঃফরপুরের সবডিভিসনাল ম্যাজিষ্ট্রেটের আদালতে ফৌজদারী দণ্ড বিধি আইনের ৩২৬ ধারা মতে অভিযুক্ত আসামীর ফৌঃ কাঃ বিঃ আইনের ৩৩ অধ্যায় মতে বিচার, প্রার্থনার দরখাস্ত···তারিখে না মঞ্জুর হওয়ায় উক্ত হুকুমের বিরুদ্ধে আপীল।

দরখাস্তকারী (Petitioner) | প্রতিপক্ষ (Opposite party)
মিঃ টি, সি, জন্। | ভারত সম্রাট।
(Appellant). | (Respondent)

আসামীর পক্ষে নিবেদন এই যে :—

১। আসামী জনৈক European British Subject হইতেছেন। তিনি ফরিয়াদী লোকমন সাহাকে গুরুতর আঘাত করার অপরাধে ফৌজদারী দণ্ড বিধি আইনের ৩২৬ ধারা মতে মজঃফরপুরের সবডিভিসনাল ম্যাজিষ্ট্রেট সাহেবের আদালতে······সালের······ নং মোকর্দ্দমায় অভিযুক্ত হন।

১। তিনি উক্ত আদালতে তাঁহার জবাব দাখিলের পূর্ব্বে ফৌজদারী কার্য্য বিধি আইনের ৩৩ অধ্যায় মতে বিচারের জন্য দরখাস্ত করেন। ম্যাজিষ্ট্রেট্ বাহাদুর প্রমাণাদি গ্রহণ করিয়া আসামীর দরখাস্ত ···তারিখে না মঞ্জুর করিয়াছেন।

উক্ত ম্যাজিষ্ট্রেট্ বাহাদুরের উক্ত হুকুমের বিরুদ্ধে নিম্নলিখিত হেতুবাদে আসামী হুজুরাদালতে আপীল দায়ের করিতেছেন।

আপিলের অজুহাত

১। ম্যাজিষ্ট্রেট্ সাহেবের আসামীর দাখিলি এভিডেভিট্ ও সাক্ষীর প্রমাণ বিশ্বাস করিয়া আসামী ফৌজদারী কার্য্যবিধি আইনের ৩৩ অধ্যায় মতে বিচার পাইতে হক্‌দার সাব্যস্ত করা উচিত ছিল।

প্রার্থনা :—

হুজুর আপীল Admit করত: নিম্ন আদালত হইতে নথি তলব করিয়া ম্যাজিষ্ট্রেট্ বাহাদুরের·········তারিখের হুকুম রদ্ পূর্ব্বক আসামী ফৌজদারী কার্য্যবিধি আইনের ৩৩ অধ্যায়মতে বিচার পাইবার উপযুক্ত ব্যক্তি সাব্যস্ত করিতে আজ্ঞা হয়। ইতি তাং···

CHAPTER IX.

নবম অধ্যায়

No. 52—Petition by a guardian of a minor child for maintenance against father.

(Sec 488 Cr. P. C.)

নং ৫২—নাবালকের অভিভাবক কর্ত্তৃক নাবালকের পিতার বিরুদ্ধে খোরপোষের দাবীর দরখাস্ত। (ফৌঃ কাঃ বিঃ আইন ৪৮৮ ধারা)

.... ম্যাজিষ্ট্রেট্ আদালত।

ফৌজদারী কেস্ নং .... সন......

শ্রীহরিদাস বসু নাবালক	বনাম	প্রতিপক্ষ শ্রীজলধর বসু
পিতা—		পিতা—
পেশা—		পেশা—
গ্রাম—		গ্রাম—
থানা—		থানা—
ইত্যাদি—		ইত্যাদি—

তৎপক্ষে তস্য নিকট আত্মীয় মাতুল

শ্রীরামচরণ ঘোষ

পিতা—

পেশা—

গ্রাম—

থানা—

ইত্যাদি—

ফৌজদারী কার্য্যবিধি আইনের ৪৮৮ ধারা মতে......প্রতিপক্ষ........এর

বিরুদ্ধে ভরণ পোষণ পাইবার দাবীতে দরখাস্ত।

উক্ত নাবালক আবেদনকারীর পক্ষে নিবেদন এই :—

১। প্রতিপক্ষ শ্রীজলধর বসু.....তারিখে উপরোক্ত নাবালকের মাতা শ্রীমতী চারুবালা দাসীকে হিন্দুশাস্ত্রমতে বিবাহ করিয়াছিলেন। নাবালক শ্রীহরিদাস বসু প্রতিপক্ষের উক্ত বিবাহজাত ঔরস পুত্র।

২। উক্ত নাবালকের মাতা শ্রীমতী চারুবালা দাসী......তারিখে পরলোক গমন করিয়াছেন। তদবধি উক্ত নাবালক তাহার মাতুল শ্রীরামচরণ ঘোষের আশ্রয়ে ও তত্ত্বাবধানে বসবাস করিতেছে।

৩। প্রতিপক্ষ সঙ্গতিপন্নব্যক্তি, তথাপি তিনি উক্ত নাবালকের মাতার মৃত্যুর পর হইতে নাবালকের কোন সংবাদ পর্য্যন্ত লন না। নাবালকের মাতুল শ্রীরামচরণ ঘোষ সম্প্রতি বৈকার অবস্থায় আছেন, এবং কষ্টে সংসার প্রতিপালন করিতেছেন। তাঁহার ভাগিনেয় শ্রীমান হরিদাস বসু নাবালকের বর্ত্তমান বয়স ১১ বৎসর এবং সে স্কুলে পড়িতেছে।

৪। গত মাসে নাবালকের মাতুল প্রতিপক্ষের সহিত সাক্ষাৎ করিয়া তাহার দুরাবস্থার বিষয় জানাইয়া উক্ত নাবালক পুত্রের বিদ্যাশিক্ষা ও ভরণপোষণের নিমিত্ত মাসিক ন্যায্য খরচ প্রদানের জন্য উক্ত প্রতিপক্ষকে বিশেষরূপে অনুরোধ করেন।

৫। কিন্তু প্রতিপক্ষ পুনঃ পুনঃ অনুরোধ সত্ত্বেও এ যাবৎ কিছুই দেন নাই এবং তাঁহার উক্ত নাবালক পুত্রের ভরণ পোষণও বিদ্যাশিক্ষার দায়িত্ব এড়াইয়া চলিতেছেন।

৬। উক্ত প্রতিপক্ষের বেতন ও বাড়ী ভাড়া ইত্যাদিতে মাসিক ৩০০৲ (তিন শত) টাকা আয় আছে কিন্তু তিনি পুত্রের ভরণ পোষণও বিদ্যাশিক্ষার সম্বন্ধে সম্পূর্ণ উদাসীন।

৭। প্রতিপক্ষ ও নাবালক হুজুরাদালতের এলাকাধীন......গ্রামে বসবাস করেন।

প্রার্থনা :—

প্রতিপক্ষের উপর নোটীশজারী অন্তে প্রমাণাদি গ্রহণে উক্ত নাবালকের ভরণ পোষণ ও বিদ্যাশিক্ষার জন্য মাসিক ৫০৲ (পঞ্চাশ) টাকা হিসাবে দিবার নিমিত্ত প্রতিপক্ষের উপর আদেশ দিতে আজ্ঞা হয়। ইতি তাং ....

No. 53. Petition by Wife u/s 488 Cr. P. C. for maintenance against husband.

নং ৫৩—স্বামীর নিকট ভরণ পোষণ পাইবার দাবীতে ফৌঃ কাঃ বিঃ আইনের ৪৮৮ ধারামতে স্ত্রীর দরখাস্ত।

পাবনা জেলার সব ডিভিসনাল ম্যাজিষ্ট্রেট বাহাদুরের আদালত!

ফৌজদারী কেস নং............ফৌঃ কাঃ বিঃ আইনের ৪৮৮ ধারা।

দরখাস্তকারিণী (স্ত্রী)	প্রতিপক্ষ (স্বামী)
শ্রীমতী চারুশীলা দেবী।	শ্রীহরিহর মুখোপাধ্যায়
স্বামীর নাম শ্রীহরিহর মুখোপাধ্যায়	পিতা—
গ্রাম—	পেশা—
থানা—	গ্রাম—
জেলা—	থানা—
ইত্যাদি-	জেলা—
	ইত্যাদি—

ফৌজদারী কার্য্যবিধি আইনের ৪৮৮ ধারামতে দরখাস্ত।

দরখাস্তকারিণীর নিবেদন এই যে :—

১। দরখাস্তকারিণী প্রতিপক্ষের পরিণীতা স্ত্রী। তাঁহাদের বিবাহ হিন্দুশাস্ত্র মতে..................তারিখে..................গ্রামে সুসম্পন্ন হইয়াছিল।

২। প্রতিপক্ষ............আফিসে মাসিক ১৭৫৲ টাকা বেতনে চাকুরী করেন।

২। প্রতিপক্ষ দরখাস্তকারিণীকে..............তারিখে নির্দ্দয়ভাবে পীড়ন করিয়া তাঁহাকে তাঁহার গৃহ হইতে বহিস্কৃত করিয়া দেন। উক্ত সময়ে স্থানীয় অনেক ভদ্রমহোদয়গণ উপস্থিত ছিলেন। তাঁহাদের নামও পরিচয় তপশীলে বর্ণিত হইল।

৩। প্রতিপক্ষ মদ্য পাণ করেন এবং তিনি চরিত্রহীন।
তিনি বিনা কারণে দরখাস্তকারিণীকে অযথা কুবাক্য বলেন ও মধ্যে মধ্যে নির্দ্দয়ভাবে পীড়ন করিয়া থাকেন সুতরাং দরখাস্তকারিণীর প্রতিপক্ষের গৃহে বসবাস করা নিরাপদ নহে। তজ্জন্য তিনি তাঁহার পিতৃগৃহে........ গ্রামে বসবাস করিতেছেন।

৪। দরখাস্তকারিণী......তারিখে তাঁহার খোরপোষের বাবদ মাসিক ২৫৲ টাকা হিসাবে দাবী করিয়া প্রতিপক্ষকে এক উকিলের চিঠি প্রেরণ করেন। প্রতিপক্ষ উক্ত পত্রের কোনও উত্তর পর্য্যন্ত দেন নাই।

৫। দরখাস্তকারিণী ও প্রতিপক্ষ হুজুরাদালতের এলেকাধীন......... গ্রামে নিয়ত বসবাস করিতেছেন। দরখাস্তকারিণীর পিতার অবস্থা ভাল নহে। তিনি অল্প বেতনে চাকুরী করেন। দরখাস্তকারিণীর যে যৎ সামান্য অলঙ্কারাদি ছিল তাহা বিক্রয় করিয়া এ যাবৎ তিনি নিজের ভরণপোষণের খরচা বহন করিতেছেন।

প্রার্থনা—

প্রতিপক্ষের উপর নোটীশ জারি অন্তে প্রমাণাদি গ্রহণে দরখাস্ত-

কারিণীকে ভরণপোষণ বাবদ মাসিক ২৫৲ টাকা হিসাবে মাসহারা দিবার জন্য প্রতিপক্ষের উপর বিহিত আদেশ দিতে আজ্ঞা হয়। ইতি তাং……

তপশীল সাক্ষী।

সাক্ষী ভদ্র মহোদয়গণের নাম ও পরিচয়—

১। ……

২। ……

৩। ……

৪। ……

No. 54. Objection by Husband to be filed in a Maintenance case. (Sec 488 Cr. P. C.)-

নং ৫৪—স্ত্রী কর্ত্তৃক আনীত ভরণপোষণের মোকর্দ্দমায় স্বামীর আপত্তির দরখাস্ত।

(ফৌঃ কাঃ বিঃ আইন ৪৮৮ ধারা)

সবডিভিসনাল ম্যাজিষ্ট্রেট আদালত রাণাঘাট।

(ধারা ৪৮৮ ফৌঃ কাঃ বিঃ)

বাদিনী— প্রতিপক্ষ—

শ্রীমতী রাধারাণী দত্ত বনাম শ্রীসুকুমার দত্ত।

স্বামীর নাম শ্রীসুকুমার দত্ত পিতা—

গ্রাম— পেশা—

থানা— গ্রাম—

থানা—

উক্ত নং……মোকর্দ্দমায় প্রতিপক্ষ……র আবেদন।

প্রতিপক্ষের নিবেদন এই যে :—

১। বাদিনী অত্র প্রতিপক্ষের আইনতঃ বিবাহিতা পত্নী হইতেছেন, ইহা সত্য। এতদ্ব্যতীত বাদিনী তাঁহার আবেদন পত্রে অত্র প্রতিপক্ষের স্বভাব চরিত্র অর্থ সঙ্গতি বিষয়ে যে সকল উক্তি করিয়াছেন তাহা সম্পূর্ণ অসত্য।

২। বাদিনী ও প্রতিপক্ষের মধ্যে মনোমালিন্যের প্রকৃত বৃত্তান্ত নিম্নে বর্ণিত হইতেছে :—

(ক) প্রতিপক্ষ নম্র ও শান্ত স্বভাব, তিনি কখনও বাদিনীর প্রতি নির্দ্দয় ব্যবহার বা তাঁহাকে প্রহার করেন নাই।

(খ) বাদিনী অত্যন্ত অশিষ্ঠা ও অশিক্ষিতা এবং তাঁহার প্রকৃতি অতিশয় উগ্রা ও তিনি কোপন স্বভাবা। প্রতিপক্ষের যাবতীয় আত্মীয় স্বজনের প্রতি বাদিনী অত্যন্ত রূঢ় ও কর্কশ ব্যবহার করেন এবং অকারণ প্রতিপক্ষ ও আত্মীয় স্বজনের সহিত সর্ব্বদা কলহ করেন।

(গ) প্রতিপক্ষ বাদিনীর এইরূপ অন্যায় আচরণ বহুদিন সহ্য করিয়াছিলেন, কিন্তু গত......তারিখে বাদিনী সর্ব্বপ্রকার ভদ্রগণ্ডি লঙ্ঘন করিয়া প্রতিপক্ষের বিধবা ভ্রাতৃজায়াকে নির্দ্দয়রূপে প্রহার করেন, তাহাতে প্রতিপক্ষ বাদিনীকে শাসন করেন। বাদিনী তাহাতে ক্রুদ্ধা হইয়া প্রতিপক্ষ প্রভৃতিকে অত্যন্ত অশ্লীল ভাষায় গালিগালাজ করিয়া তাঁহার পিত্রালয়ে চলিয়া যান।

(ঘ) বাদিনী প্রতিপক্ষের গৃহে ফিরিয়া আসিয়া শান্তভাবে, প্রতিপক্ষের উপযুক্ত স্ত্রীরূপে বসবাস করিলে, প্রতিপক্ষ সর্ব্বদাই বাদিনীকে ভরণপোষণ করিতে প্রস্তুত।

(ঙ) প্রতিপক্ষ দরিদ্র ব্যক্তি। তিনি মাসিক ৫০ (পঞ্চাশ) টাকা মাত্র উপার্জ্জন করেন এবং তাঁহার সংসারে অনেক পোষ্য।

এমতে প্রার্থনা, হুজুরাদালত উভয় পক্ষের সাক্ষ্য প্রমাণ গ্রহণ পূর্ব্বক বাদিনীর ভরণপোষণের আবেদন অগ্রাহ্য করিবার আদেশ দিতে আজ্ঞা হয়। ইতি তাং......

No. 55. Petition by Husband for reducing the allowance ordered to be paid by Court to wife. (Sec. 489 Cr. P. C.).

নং ৫৫—আদালত কর্ত্তৃক নির্দ্ধারিত স্ত্রীর প্রাপ্য মাসহারার হার কমাইয়া দিবার জন্য স্বামীর আবেদন। (ফৌঃ কাঃ বিঃ আইন ৪৮৯ ধারা)

.........ম্যাজিষ্ট্রেট্ আদালত

কেস নং......সন......ধারা ৪৮৮ ফৌঃ কাঃ বিঃ আঃ

দরখাস্তকারিণী (স্ত্রী)	বনাম	প্রতিপক্ষ (স্বামী)
শ্রীমতী—		শ্রী—
পিতা—		পিতা—
গ্রাম—		পেশা—
থানা—		গ্রাম—
ইত্যাদি—		থানা—
		ইত্যাদি—

মাসহারার পরিমাণ হ্রাস করিয়া দিবার প্রার্থনা—

আবেদনকারী প্রতিপক্ষ.........র নিবেদন এই যে :—

১। ১৯২৯ সনের......নং মোকর্দ্দমায়......তারিখের......নং হুকুম দ্বারা আদালত প্রতিপক্ষের উপর তাঁহার স্ত্রী দরখাস্তকারিণীকে ২৫৲ টাকা হারে মাসহারা দিবার আদেশ দিয়াছেন।

২। প্রতিপক্ষ এতাবৎকাল যথাযথরূপে আদালতের আদেশ পালন করিয়া আসিতেছিলেন।

৩। দরখাস্তকারী প্রতিপক্ষ মেসার্স......কোম্পানীর অফিসে মাসিক ২০০৲ টাকা মাহিনায় কার্য্য করিতেছিলেন, কিন্তু গত জানুয়ারী মাসে অফিসের সাধারণ ব্যয় সঙ্কোচের কালে তিনি কর্ম্মচ্যুত হইয়াছেন।

৪। উক্ত কারণে প্রতিপক্ষের বিষম অর্থকষ্ট উপস্থিত হওয়ায় তিনি তাঁহার স্ত্রীকে উপরোক্ত হারে মাসহারা দিতে একেবারেই অক্ষম।

প্রার্থনা—

দরখাস্তকারীর বর্ত্তমান অবস্থা সম্বন্ধে প্রমাণাদি লইয়া মাসহারার হার হ্রাস করিয়া ১০৲ দশ টাকা হারে মাসহারা দিবার আদেশ দিতে আজ্ঞা হয়।

দ্রষ্টব্য ঃ—মাসহারা দিবার আদেশ হইবার পর দেওয়ানী আদালতের ডিক্রী দ্বারা বিবাহ নাকচ্ হইলে অথবা আইনসঙ্গত ভাবে বিবাহ হয় নাই বলিয়া প্রমাণিত হইলে স্বামী মাসহারার হুকুম রদ করিবার জন্য দরখাস্ত করিতে পারেন। ম্যাজিষ্ট্রেট্ অভিযোগের বিষয় অনুসন্ধান করিবেন এবং মোকর্দ্দমার অবস্থানুযায়ী আদেশ দিবেন। মাসহারার মোকর্দ্দমায় আদেশ হইবার পর যদি পক্ষগণের মধ্যে ভিন্ন চুক্তি হয় তাহা হইলে উক্ত চুক্তি অনুসারে আদেশ পরিবর্ত্তনের জন্য আবেদন করা যাইতে পারে।

No. 56. Petition by Wife for enforcing the order granting her Maintenance Allowance. (Sec. 490 Cr. P. C.).

নং ৫৬—আদালত কর্ত্তৃক ধার্য্য মাসহারা আদায় জন্য স্ত্রী কর্ত্তৃক আদালতে আবেদন। (ফৌঃ কাঃ বিঃ আঃ ৪৯০ ধারা)

.........ম্যাজিষ্ট্রেট আদালত। জেলা....।

কেস নং......সন......ধারা ৪৮৮ ফৌঃ কাঃ বিঃ আঃ।

আবেদনকারিণী (স্ত্রী)	বনাম	প্রতিপক্ষ (স্বামী)
শ্রীমতী—		শ্রী—
স্বামী—		পিতা—
পেশা—		পেশা—
গ্রাম—		গ্রাম—
থানা—		থানা—
ইত্যাদি—		ইত্যাদি

মাসহারা আদায় নিমিত্ত স্ত্রীকর্ত্তৃক প্রার্থনা।

আবেদনকারিণীর নিবেদন এই যে ঃ—

১। উপরোক্ত......নং মোকর্দ্দমায় ২২।৮।৩৫ তারিখের ১২ নং হুকুম দ্বারা হুজুর প্রতিপক্ষের উপর তাঁহার স্ত্রী, আবেদনকারিণীকে ৫০৲ টাকা হারে মাসহারা দিবার আদেশ দিয়াছেন।

২। উক্ত আদেশ হওয়ার পর এ ছয় মাস কাল প্রতিপক্ষ আবেদনকারিণীকে এক কপর্দ্দকও আদায় দেন নাই। হুকুমের নকল অত্র দরখাস্তের সহিত দাখিল করা হইল।

প্রার্থনা ঃ—

হুজুর প্রতিপক্ষের উপর নোটিশ জারী অন্তে প্রমাণাদি গ্রহণে প্রতিপক্ষের নিম্ন তপশীল বর্ণিত সম্পত্তি ক্রোকে বিক্রয় দ্বারা আবেদনকারিণীর ছয় মাসের মাসহারা বাবৎ প্রাপ্য ৩০০৲ টাকা আদায়ের আদেশ অথবা প্রতিপক্ষের বিরুদ্ধে গ্রেপ্তারের পরোয়ানা জারী করিয়া তাঁহার আইনানুযায়ী কারাবাসের আদেশ দিতে আজ্ঞা হয়। ইতি তাং......

তপশীল।

সম্পত্তির বিবরণ।

....

দ্রষ্টব্য ঃ—স্বামী মাসহারার টাকা দিতে ইচ্ছাপূর্ব্বক অবহেলা করিলে আদালত তাঁহাকে কারাবাসের আদেশ দিতে পারেন।